Vol. IV

TRANSCRIPT OF RECORD

(Pages 1253 to 1668)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED MARCH 26, 1945.
APRIL 23, 1945.

CERTIORARI GRANTED APRIL 23, 1945.

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CHARLES ELMORE CROPLEY

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

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The Witness: That is another thing, Mr. White, I think is far removed and far afield from the issue that you have to decide.

Mr. Harris: Certainly is, no doubt about that.

By Mr. Thiess:

Q. Did your nephew thereafter inform you that the buses of the Marts Bus Line were again stopping at his filling station? A. Not again stopping, but he informed me that they were stopping.

Off the record.—— 3758

(Discussion off the record.)

Mr. Thiess: I would like to offer into evidence the record in the District Court of the United States for the Middle District of Pennsylvania in the matter of Frank Martz Coach Company, Debtor, in bankruptcy, as Amici Exhibit 119; also an order in the same case, in the District Court of the United States for the Middle District of Pennsylvania, as Amici Exhibit 120.

Mr. Harris: I call your attention to three discrepancies. First, the letter marked Exhibit 119 refers to Marts Bus Line, and Exhibit 120 refers to Martz Coach Company—118, the letter, refers to Marts Bus Line, 119 refers to Martz Coach Company, and 12.. refers to Frank Martz Coach Company. 3759

Are they one and the same company?

Mr. Neuman: Our understanding is that they are.

Mr. Thiess: That is my understanding.

Mr. Harris: Do you know?

The Master: What is the relevancy of the examination on this point, Mr. Thiess?

Mr. Thiess: Well, we have here the nephew of Judge Davis, as I understand it, buying gasoline from this particular company,——

3760 *Colloquy*

The Master: Selling gasoline.

The Witness: No selling.

Mr. Thiess: Selling gasoline to this particular company, and that they discontinued, as I understood the testimony—this is a new story to me at the present time, that this was the first time that they started—that is the way I understood the testimony before—and that Judge Davis then wrote the letter, Exhibit 118, to the company to ascertain why they were not stopping, and then after that the buses stopped and gasoline was again sold to them. Now, this company
3761 was in bankruptcy, and this bankruptcy would ultimately get to the Court of Appeals of the Third Circuit.

Mr. Harris: Well, I certainly think that is far afield and I object to the admission of these documents and to any testimony with respect to them.

The Master: Well, how do you expect to connect it up with the matter which is under discussion here? It does seem to me to be somewhat off the point.

Mr. Thiess: Well, it is part of these transactions the same as the Fox matter, and we want to use it for the same purpose.

3762 Mr. von Holst: It was introduced in the Government's case for the purpose of showing the general practice.

Mr. Harris: What general practice?

The Witness: He wants to show, Mr.——

Mr. Harris: Just a minute, Judge.

The Witness: Let me make this statement. He wants to show I am a mean, corrupt judge and using my official position for advantage to my relatives.

Mr. Harris: He means more than that.

The Witness: Just wait,——

Mr. Harris: Having done that——

The Witness: —that was what was tried to be shown in the case, in the criminal case—and that inferentially, these fellows, if and when this case would come before me, would get some consideration. Now, then, Mr. Thiess tells me this is the beginning of the bankruptcy proceeding. This is dated August 31, 1938.

Mr. Neuman: That is the certification.

The Witness: My letter is dated July 9, 1938. I never heard of this bankruptcy, it never came to our court, and I never knew there was such a thing as this bankruptcy until this investigation began. 3764

The Master: Was that evidence introduced in the criminal case?

Mr. Thiess: Yes, it was.

The Witness: Oh, yes, the second trial, you could introduce anything in the world you wanted,——

Mr. Thiess: It was introduced in both cases.

The Witness: —whether it had any relevancy or whether it did not.

The Master: Did it have any connection with Mr. Kaufman, or Universal Oil Company?

The Witness: None whatever, not the slightest—any more than the one thousand-dollar bill does. 3765

The Master: Do you think it is relevant, Mr. Thiess, under the circumstances?

Mr. Thiess: Well, I believe it is, under the same theory. It is a little further removed.

Mr. Harris: But under the same circumstances as the Fox transaction, is that what you were about to say?

Mr. von Holst: Same general category.

Mr. Thiess: Same general category.

Mr. Harris: I am glad to hear you say that.

3766 *J. Warren Davis—For Amici Curiae—Direct*

The Witness: I have no objection, if you can see any relevancy in it, Mr. Master.

The Master: Are you nearly through with it?

Mr. Thiess: Yes, I am through with it right now.

The Master: You are through with it?

Mr. Thiess: Yes.

Mr. Harris: Did you get the name straight? Are these one and the same company? Judge Davis may not know.

Mr. Neuman: If you look at the two orders, when you point out differences in the title, they are both
3767 numbered the same.

Mr. Harris: That is true, but the letter is different.

Mr. Neuman: Also, in the second exhibit, the man appointed trustee is William A. Gallagher, who is the party to whom that letter is addressed.

Mr. Harris: I still ask whether they are the same company.

By Mr. Thiess:

Q. Well, do you know whether they are the same company, Judge Davis? A. No, I do not know. My later in-
3768 formation is that Mr. Gallagher was connected with this company that went into bankruptcy before it went into bankruptcy, and after it went into bankruptcy and I knew Mr. Gallagher, whether the company was in bankruptcy then, I never heard of the bankruptcy until after this investigation began.

The Master: Well, suppose you proceed with something else, Mr. Thiess, and get through with Judge Davis.

Mr. Thiess: All right.

(Photostatic copy of order of the District Court of the United States in and for the Middle

District of Pennsylvania, in the Matter of Frank Martz Coach Company, Debtor, No. 9788, in Bankruptcy, dated June 27, 1938, was marked Amici Exhibit 119.)

(Photostatic copy of order of the District Court of the United States in and for the Middle District of Pennsylvania, in the Matter of Martz Coach Company, No. 9788, dated June 1, 1938, was marked Amici Exhibit 120.)

By Mr. Thiess:

3770

Q. Did you have a meeting with Mr. Willauer, one of the representatives of the Attorney General, in the offices of Senator Pepper in the year 1939, after the investigation had been started? A. Yes, sir.

(Discussion off the record.)

By Mr. Thiess:

Q. As a result of that meeting were these papers which I now show you prepared by you or at your direction and supplied to Senator Pepper? A. Yes,—in reply to what?

Q. Were they prepared by you or at your direction and supplied to Senator Pepper? A. Yes.

Mr. McCullough: 93 and 94, you say? 3771

Mr. Thiess: Yes.

By Mr. Harris:

Q. You say this letter that Senator Pepper signed was prepared by you?

Mr. Thiess: This paper here.

A. No, not that, but this paper (indicating) was prepared by me. The letter I know nothing about.

By Mr. Harris:

Q. You knew nothing about the letter? A. No.

3772 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Was Mr. George Wharton Pepper representing you at that time? A. Well, I do not know whether you could call it a legal representation or not: Senator Pepper was one of my teachers at the University Law School, and I used to take up a great many things with him, and when this investigation came, why, I went to see him and took it up with him and asked him for his advice—not as attorney, but as a friend—and he advised me right along. As I told you this morning, when they shifted to New York, why, he secured
3773 Mr. John M. Harlan for me. If you say a legal representation I would think Senator Pepper would perhaps demur, and say, "I did not represent him as a lawyer, but as a friend."

Q. Well, in such representation do you remember—do you not know that Senator Pepper sent this document for which you furnished the information—— A. Yes.

Q. —to the Department of Justice? A. I knew that he either sent or delivered it to the Department of Justice, but whether he sent it by letter, under mail, or whether he delivered it, I don't know, because he had one or two conferences with the Department of Justice in person, and which way he got this over to them I did not know until the trial
3774 came on.

Mr. Thiess: Have you any objection to this letter going in?

Mr. Harris: Oh, yes, of course, I object to all this. I think it is ridiculously far afield.

Mr. Thiess: I would like to offer in evidence the document containing the information which Judge Davis furnished to the Department of Justice, as Amici Exhibit 121.

The Master: That is admitted. I don't think that Mr. Pepper's letter is relevant unless you want it on the record.

Mr. Thiess: I would like to mark this letter as Amici Exhibit 122 for identification.

(Memorandum of information submitted by Judge Davis to the Department of Justice was marked Amici Exhibit 121.)

(Photostatic copy of letter dated December 7, 1939, from George Wharton Pepper to Matthew F. McGuire, Esq., Department of Justice, was marked Amici Exhibit 122 for identification.)

By Mr. Thiess: 3776

Q. Have you any recollection, Judge Davis, as to when it was that you prepared this statement?

Mr. Harris: Exhibit 121?

Mr. O'Mara: Yes.

A. Well, it was sometime after Mr. Willauer and his two associates called at the office of Senator Pepper. I don't know whether the date is on this or not, I do not see it, but I think it is perfectly susceptible of establishing, what the date is. I don't know now.

By Mr. Thiess:

Q. You don't know whether it was in 1939 or 1940? 3777

Mr. Harris: Well, it had to be in 1939, didn't it? This letter——

The Witness: I think——

Mr. Thiess: You are objecting to the letter.

Mr. Harris: Well, you don't claim it——

The Witness: I think it was in '39, at least, if in '40, very early, because it was before any proceedings took place in New York.

The Master: Well, if the question of the date is involved then I think Senator Pepper's letter might be relevant as showing the date.

3778 *Colloquy*

Mr. Thiess: That is what we have in mind.

The Witness: Well, can we not agree upon the date? We will accept the date of that letter without the letter.

Mr. Thiess: Well, I will then offer Senator Pepper's letter as Exhibit 122.

Mr. Harris: Solely for the purpose of establishing the date of the memorandum? That is all that the Master indicated.

The Master: That is all I will admit it for, yes.

3779 (Photostatic copy of letter dated December 7, 1939, from George Wharton Pepper to Matthew F. McGuire, Esq., Department of Justice, previously marked Amici Exhibit 122 for identification, was marked Amici Exhibit 122.)

The Witness: Are you through with this subject?

Mr. Thiess: Yes, unless you want to make a statement.

The Witness: Yes, I do want to make a statement. This paper which I prepared and gave to Senator Pepper is offered for the purpose of showing that I did not include the Lewis transactions and the loan of money in this paper, and Mr. Willauer went upon
3780 the stand, and I assume you will have his testimony, and that is why I am making this statement, saying that he requested of me every transaction of every kind and nature in which I had engaged for—I think went back to 1924, or something of that kind, '24 or '28, down to the present time, and I stated that he asked me no such thing, that he asked me only the questions which I answered here, and which did not have any relation to any transactions such as Lewis, and I submitted a copy, or the original paper which he gave to me, indicating the information which he wanted. Fortunately I had that, and unfortunately the Government did not produce it, nor a copy of it,

and at the head of each one of these things he asked for, six in number, I quoted just what he had asked for and gave him the exact information for which he asked—all of which would have excluded any transaction such as Lewis gave, and that was what this was offered for.

By Mr. Thiess:

Q. Well, this also does not show the Page mortgage. A. No, because of the fact that it had been given to my daughter and was in her possession and was not property of ours. He wanted a statement of our assets at that time and I gave him a statement of our assets at that time. 3782

Mr. Harris: Well, under those circumstances I think, Mr. White, that perhaps Senator Pepper's letter does become relevant.—

Mr. Thiess: I think it does.

Mr. Harris: —as containing the statement that this was the information requested by the Department of Justice.

Mr. Thiess: It makes the whole letter relevant.

The Witness: There was one thing for which they wanted to admit and did admit that letter, and Senator Pepper, advisedly or inadvisedly, said, "I am submitting a statement of the Judge's business transactions", or words to that effect, but they didn't ask for any such thing as that and I gave just what they asked for, and you will find at the head of each paragraph just what they asked for, I quoted it, and he sent it to them or gave it to them, and they never came back at all and said, "This is not what we asked for, we asked for something more." 3783

Mr. Harris: Senator Pepper does say in his letter:

"When Mr. Willauer and his two associates called here on November 22nd he submitted to

3784 *J. Warren Davis—For Amici Curiae—Direct*

Judge Davis in my presence a written memorandum of information which he requested the Judge to furnish. A copy of the memorandum is enclosed herewith."

The Witness: Yes.

The Master: Well, objection being withdrawn. Senator Pepper's letter is admitted generally.

Mr. Harris: Now, Mr. Thiess, do you have the memorandum prepared by the Government to which Judge Davis has now referred?

3785 Mr. Neuman: We will try and get it.

Mr. Thiess: We haven't got it.

Mr. Harris: Have you ever seen it?

Mr. Neuman: No, sir.

Mr. Thiess: No, we have never seen it.

The Witness: If they do not have it, it is contained in the quotations, six of them are pieced together, and we offered it in evidence at the trial.

By Mr. Thiess:

Q. It is merely a summation, then, as I understand it, of the headings of the various paragraphs on Amici Exhibit 121? A. That is right, Mr. Thiess, but I thought it ought to

3786 be explained.

Q. Now, were you thereafter represented by Mr. Harlan, an attorney in New York, connected with the firm of Root, Clark and Buckner? A. Yes.

Q. And did you supply to Mr. Crouch, an accountant employed by that firm, information respecting your financial status, various transactions which you and Mrs. Davis had had, and data respecting entries of you and Mrs. Davis to your safety deposit boxes? A. I gave Mr. Harlan everything I had that he asked for.

Q. You concede, do you, that this statement that you gave Mr. Crouch is correct? A. So far as I know.

Mr. McCullough: What number is that?

Mr. Neuman: 97.

The Witness: I did not give Mr. Crouch that statement, I gave him information from which he drew the statement, or in part. He searched the banks and every other place, and when he would search the banks and use the records which I had given him and Mrs. Davis had given him, and all other information which he could find anywhere, why, he drew the statements to which you refer.

Mr. Thiess: I would like to offer in evidence as 3788
Amici Exhibit 123 the letter from Root, Clark, Buckner and Ballantine to Walter Gahagan, Esq., enclosing the statement referred to by Judge Davis and which is entitled, "Summary of Cash Deposited and Withdrawn From Safe Deposit Boxes by Judge Davis January 1, 1932-January 1, 1940".

(Photostastic copy of letter dated July 3, 1940, from Root, Clark, Buckner & Ballantine, to Walter Gahagan, Esq., and attached "Summary of Cash Deposited and Withdrawn From Safe Deposit Boxes by Judge Davis January 1, 1932-January 1, 1940" was marked Amici Exhibit 123.) 3789

By Mr. Thiess:

Q. Now, this Crouch statement, as I understand it, Judge Davis, does not show Mrs. Davis' loan of forty-four hundred dollars to David Lewis in March, 1936, is that correct? A. I could not tell you without looking at it.

Q. All right. Well, then, you don't need to look at it? A. I do not know. I know this, that at the bottom of one of the exhibits it says that this does not reflect the Lewis loans, or words to that effect.

3790 *J. Warren Davis—For Amici Curiae—Direct*

Q. Is that what you have in mind, sir?

(Amici Exhibit 123 was shown to the witness.)

The Master: Probably the statement will speak for itself, won't it, Mr. Thiess?

Mr. Thiess: I beg your pardon?

The Master: The statement will speak for itself, will it not?

Mr. Thiess: I think it will, yes.

The Witness: Yes.

Mr. von Holst: The statement identified as Amici
3791 Exhibit 123 comprises five pages, exclusive of the first sheet, which is the letter of July 3, 1940.

By Mr. Thiess:

Q. Now, Judge Davis, it is true, is it not, that it was not until September of 1940 that you told about any loan to Lewis, that is, David Lewis, by Mrs. Davis, in an amount as much as four thousand dollars? A. No, I wouldn't say that. I would say that at one time.

Q. What, at one single loan? A. That is right, I think that is right.

Q. With that qualification my statement is correct?
3792 A. That is right.

Q. Now, Judge Davis, I call your attention to two letters dated November 4, 1933, both from David Lewis, to the Honorable J. Warren Davis. Do you recognize those letters?

(The witness examined the letters.)

A. Yes.

By Mr. Thiess:

Q. And as I understand it, am I correct that these are the only written documents that you have on which you base

the change of dates as to when these transactions with Mr. Lewis occurred? A. That, together with the entrances to the box, that is a document submitted, and this letter was a letter that was found by Mrs. Davis in an old desk that we had, and were using at that time, after we had been to New York, and I didn't know we had these. This letter is the letter to which I referred this morning, asking on November 4, 1933, for the loan of $2,725.00, which constituted the first large loan which she had made to him alone.

Mr. Thiess: I would like to offer these two letters in evidence, the one letter of November 4th, which 3794
contains the statement of original worth, as Amici Exhibit 124, and the second letter under the same date as Amici Exhibit 125.

The Witness: You mean by "original worth", the original worth of certain stocks——

Mr. Thiess: Yes.

The Witness: —which he then possessed.

Mr. Thiess: I just wanted to identify the letters.

The Witness: That is all right.

(Photostatic copy of letter dated November 4, 1933, from David Lewis to Hon. J. Warren Davis, and attached statement, was marked Amici Ex- 3795
hibit 124.)

(Photostatic copy of letter dated November 4, 1933, from David Lewis to Hon. J. Warren Davis, was marked Amici Exhibit 125.)

By Mr. Thiess:

Q. I would like to call your attention, Judge Davis, to Amici Exhibit 124, in which you say——

Mr. Harris: In which Mr.——

3796 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Thiess: Judge Davis says.

Mr. Neuman: No, Lewis.

By Mr. Thiess:

Q. — or, Mr. Lewis says, I meant to say, to you:

"I trust that your will see the party in question and try to arrange the loan for me."

A. Yes.

Q. Who was she referring to as the party? A. Who was
3797 he referring to?

Q. Or, he. A. He was referring to Mrs. Davis, and I took the letter home to her and left it with her, and she found that, and I presented it to Mr. Harlan.

Q. Had Mrs. Davis made any loans to Mr. Lewis prior to that time? A. Yes.

Q. And the reason I ask that question, Mr. Lewis in the letter does not refer to Mrs. Davis whom he had met before and made the loans with, I understand, as the party. A. He refers to—"I wish you would see the party."

Mr. Harris: He said he refers to Mrs. Davis. Now you ask, why did it refer to Mrs. Davis?

3798

By the Master:

Q. Did Mrs. Davis get that stock as collateral? A. No, sir, she did not, I didn't ask him for it, and when we made, Mr. White, the loan of three thousand and ninety-five dollars I didn't ask him for anything except a note, and he gave me a note each time we made a loan to him of any size, he gave me a note, and when he repaid the loan we handed the note back to him. I knew David Lewis perfectly well. He was a good friend of mine and he was absolutely honest, as far as I know. I never lost a cent by him.

By Mr. Thiess:

Q. Had Mr. Lewis given you notes prior to November, 1935—November 4, 1933, that is what I mean to say? A. Yes.

Q. He had always given you notes? A. When I made any loan of any size. In '28 I think was when I made a three thousand dollar loan to him and he gave me a note for that. He gave me a note when Mrs. Davis and I made the loan to him of three thousand and ninety-five dollars. He gave me a note when Mrs. Davis made this loan to him. He gave me a note when I made the thousand dollar loan 3800
to him in '36. He gave me a note—or, Mrs. Davis a note when she loaned the forty-four hundred dollars, and likewise when she loaned him twenty-two hundred dollars.

By the Master:

Q. Were any of those notes ever produced in evidence? A. No, sir, I tried to find them, I contacted his son, and so did the F. B. I., or District Attorney, and he tried to find those notes to see if Mr. Lewis had them, and his son said that everything that his father had, with the tearing down of the building where he had engaged in business for years had been destroyed with the building.

Q. Was the estate settled up by his son? A. Well, I 3801
assume so. I do not know——

Q. Do you know—— A. —but I assume so.

Q. Were these stocks found among his assets, or don't you know? A. I don't know, Mr. White, whether he had disposed of them or whether they were found among his assets, but he told me, and he was friendly with me, and would have given me anything that he had, that it was absolutely impossible to find anything because they had been destroyed when the building was destroyed, or torn down, or moved out, and my information is he told the F. B. I.

3802 *J. Warren Davis—For Amici Curiae—Direct*

and the District Attorney the same thing. Anyway, I tried to get all the evidence I could.

By Mr. Thiess:

Q. Judge Davis, did you write the opinions in the Fox bankruptcy cases? A. No, sir.

Q. Did you write any of the opinions in the Fox bankruptcy cases? A. If you mean by writing the opinions, were they written on my typewriter, two of them were. Threes of them were written on Judge Buffington's type-
3803 writer. All of them were written by him originally, and two of them I criticized at length, and he asked me to take, and I took them to him, and went over the criticism with him, because it was an important case, involving the restraining of the District Judge, and so forth, and I went over them and he agreed to them, asked me to take them and interline them and have them written by my secretary and sent to him, and I did that.

The other three are written on his typewriter, all of them, substance by him, on his typewriter, just as different from my typewriter as day is from night, and written differently, and just like all of his opinions at that time were written on his own typewriter.

3804 Q. Judge Davis, were you present at the first trial and did you hear Judge Buffington testify that he did not write any of the opinions—— A. Yes.

Q. —in the Fox case? A. Yes.

Q. And did you also hear him so testify in the second case? A. Yes,—but did not deny that those were written on his typewriter, nor why—nor explain why, and if there is any question about that I hope the Master will see his opinions written just at the time the Fox opinions were written and see the opinions that were written by me at that time, about which there is no question, and compare them, and you will have no question as to who wrote those opinions.

By the Master:

Q. Well, did Judge Buffington say that you had composed the opinions? A. He said he didn't write them. That was all he said.

Q. Well, was his statement correct? A. No, it wasn't correct. Three of them were written entirely by him and on his typewriter and sent to me. Two of them were written on my typewriter, after he had written them and submitted them for criticism. Q. Well, as I understand it, you say that he composed the opinions himself, in the first place? A. Yes.

Q. And I understood from what you just said that Judge Buffington did not so remember it? A. He said that he 3806
didn't write them, that is what he said.

Mr. Harris: Maybe he meant, didn't typewrite them.

Mr. Thiess: I would like to offer——

The Witness: And you will find it in the testimony, Mr. White, when Judge Buffington was on the stand last time and testified that his hearing was so bad and his eyesight was so poor that he couldn't write at all, scarcely,——

The Master: Yes.

The Witness: —and when I produced letter after letter written at that time, in longhand, to me, and 3807
some of the opinions, down at the bottom, where he had written, and he was asked if that was not so, "Well," he said, "my memory is so bad, I can't even think back two months."

Mr. Harris: Well, as a matter of fact, the Master produced yesterday a handwritten letter of one page by Judge Buffington, dated September 28, 1942, which was very well written.

The Witness: Well, you will find his testimony to what I have said.

Mr. Harris: That is marked in evidence.

The Witness: And, further, the District Attorney said to me—and I don't know whether that influenced Judge Buffington or not, and I don't want to say a thing against him, because he is my friend and has been—the District Attorney said to me, "The Grand Jury is insisting on going ahead and investigating Judge Buffington, and won't you go in there and talk for Judge Buffington before the Grand Jury?", and I went in there, you have got it in the notes, and said Judge Buffington was as straight as a string, and he
3809 has never done anything wrong, and I stated, I think I stated he had written those opinions, but there wasn't a thing wrong, and there was no reason for them to investigate him and to go on, but, anyway, the Grand Jury was insisting, so the District Attorney said, and asked me if I wouldn't go in on his behalf, and I did, after I knew they had indicted me, at least, the indictment hadn't been presented then, but he told me it had been voted. You will find my testimony about him in that book.

By Mr. Thiess:

3810 Q. While they are looking that up, Judge Davis, I call your attention to a letter under date of March 9, 1938, from Joseph Buffington to J. Warren Davis, and ask you whether you recognize that letter.

(The witness examined the letter.)

Mr. Harris: You haven't got a copy?

Mr. Thiess: I think you have it.

Mr. Harris: What number is that?

A. Yes.

Mr. Harris: What number is that?

Mr. Neuman: 51.

Mr. Thiess: 51. I wish to offer this letter in evidence as Amici Exhibit 126.

(Photostatic copy of letter dated March 9, 1938, from Joseph Buffington to Hon. J. Warren Davis was marked Amici Exhibit 126.)

The Witness: And if you have—I do not have it—if you have my reply to this I wish you would put that in evidence,——

Mr. Thiess: Haven't got it.

The Witness: —because this was one, as I recall it, one of the opinions which I corrected and had 3812
written on my typewriter and I sent it back, telling him it was his opinion, and so forth, and that was the last I ever heard of it.

Mr. Thiess: We don't have the reply to that.

Mr. Harris: Let's make a determined effort to get it, because that is important.

By the Master:

Q. This is one of the five cases here that you referred to, is it? A. Yes, sir.

Q. In the Fox bankruptcy matter? A. Yes, sir.

Mr. Thiess: I would like to read into the record 3813
from the second trial from Judge Buffington's testimony,——

Mr. Harris: What page?

Mr. Thiess: —page 1140, where the questions and answers were made:

"Q. Who wrote the Fox opinion, sir, if you know?

"A. Well, I know I did not, and I know Judge Thompson who sat in it, did not. Who wrote the opinions,—I did not see them written and I can't say that.

3814 *J. Warren Davis—For Amici Curiae—Direct*

"Q. What other Judge sat on those cases with you? "A. Judge Thompson, Judge Davis and I."

Mr. Harris: Well, of course, you are just reading that. I don't know for what purpose you are reading it.

Mr. Thiess: Well,——.

Mr. Harris: That is not evidence in this case.

Mr. Thiess: Judge Davis said he heard him so testify.

Mr. Harris: I know, but what good does this do? This doesn't prove anything. This is not evidence.

3815 Mr. Thiess: This is what he testified to.

Mr. Harris: You can't contradict him by reading something in the record any more than if you read the Pennsylvania Railroad time table in. It is not evidence. You have done that repeatedly. I don't know what the object is.

The Witness: Go ahead, Mr. Thiess.

By Mr. Thiess:

Q. Well, now, I want to just ask you, Judge Davis, whether you have talked to anyone regarding the matters you have testified to here prior to taking the stand here yesterday and subsequent to your appearance as a witness in the Kaufman disciplinary hearings. A. Oh, many people, many people.

3816 Q. Who have you talked to? A. Well, I talked to my secretary, I talked to my wife, I talked to my son, and I talked to many people.

Q. Did you talk to Mr. Kaufman? A. Yes.

Q. Did you talk to anyone——

By Mr. Harris:

Q. You mean since you took the stand yesterday?

Mr. Thiess: No.

A. I don't know whether it was yesterday or the day before, he got an announcement of my son's marriage and called me up to congratulate me on the announcement of my son's marriage.

By Mr. Thiess:

Q. Well, did you talk to him about the matters of this case? A. I did in general, he asked me if I had been on the stand, he asked me if I had concluded, and words to that effect.

3818

By Mr. Harris:

Q. Is that about all? A. That is in substance all he said.

By Mr. Thiess:

Q. Did you talk to him about anything that he had testified to? A. I don't recall that.

Q. For how long a time did you talk to Judge Kaufman about—— A. Mr. Kaufman.

Q. Mr. Kaufman—about these proceedings? A. I think it was two or three minutes.

Q. Was this on the telephone or personally? A. No, on the telephone.

3819

Q. On the telephone. A. He called me up and congratulated me, wanted to know about the young lady, said he had just gotten the announcement, she was married the latter part of last week, he had just gotten the announcement.

Q. Did you talk to any representatives of the Universal Oil Products Company? A. Yes.

Q. Who did you talk to? A. Mr. Harris, Senator O'Mara, and maybe all these gentlemen here, I don't know.

Q. And when did you talk to them? A. Not about this case, I talked——

3820 *J. Warren Davis—For Amici Curiae—Direct*

Q. I mean about this case. A. No, didn't talk to them about this case.

Q. That is what I mean. A. No, I didn't talk to them about this case.

Mr. Harris: Well, for your edification——

The Witness: Off the record,——

(Discussion off the record.)

Mr. von Holst: If the Master please, in view of the inquiries made this morning about the Orange County conveyances, we offer them as follows:

3821 As Amici Exhibit 127, the deed from Charles L. Stokley and his wife to J. Warren Davis, conveying certain property in Orange County.

(Certified photostatic copy of deed dated February 27, 1936, from Charles L. Stokley and Delta M. Stokley, his wife, to J. Warren Davis was marked Amici Exhibit 127.)

Mr. von Holst: We offer as Amici Exhibit 128 a mortgage dated January 10, 1930, between C. L. Stokley and Delta M. Stokley and the Eustis Packing Company, a corporation, Amici Exhibit 128.

3822 (Certified photostatic copy of mortgage dated January 10, 1930, between C. L. Stokley and Delta M. Stokley, his wife, and the Eustis Packing Company, a corporation of Eustis, Florida, was marked Amici Exhibit 128.)

Mr. von Holst: We offer in evidence as Amici Exhibit 129 a mortgage dated the 8th day of January, 1930, between Charles L. Stokley and Delta M. Stokley and the Eustis Packing Company.

(Certified photostatic copy of mortgage dated January 8, 1930, between Charles L. Stokley and

Delta M. Stokley, his wife, and the Eustis Packing Company, a corporation," was marked Amici Exhibit 129.)

Mr. von Holst: We offer in evidence a mortgage dated the first day of September, 1936, between C. L. Stokley and Delta M. Stokley, hereinafter called the mortgagors, and the First State Bank, as Amici Exhibit 130.

(Certified photostatic copy of mortgage dated September 1, 1936, between C. L. Stokley and Delta M. Stokley, his wife, and the First State Bank, was marked Amici Exhibit 130.) 3824

Mr. von Holst: We offer in evidence satisfaction of mortgage signed by the Eustis Packing Company, in favor of Charles L. Stokley and Delta M. Stokley, his wife, and dated the 11th day of February, 1936, as Amici Exhibit 131. We haven't got copies of these last two.

Mr. Harris: Mr. Rodebaugh, will you have them made and sent to us as soon as possible?

(Certified photostatic copy of satisfaction of mortgage dated February 11, 1936, from The Eustis Packing Company to Charles L. Stokley and Delta M. Stokley, his wife, was marked Amici Exhibit 131.) 3825

Mr. von Holst: We also offer in evidence satisfaction of mortgage dated the 11th day of February, 1936, signed by The Eustis Packing Company, in favor of Charles L. Stokley and Delta M. Stokley, his wife, as Amici Exhibit 132.

(Certified photostatic copy of satisfaction of mortgage dated February 11, 1936, from The Eustis Packing Company to Charles L. Stokley

3826 *Colloquy*

and Delta M. Stokley, his wife, was marked Amici Exhibit 132.)

The Witness: Mr. von Holst, may I ask when these mortgages were satisfied and canceled?

Mr. von Holst: We just put in the last two.

The Witness: Yes, and the date of those?

Mr. Harris: February 11, 1936.

Mr. von Holst: 1936.

The Witness: 1936. Are those in any way connected with the property that was conveyed to

3827 Kaufman?

Mr. von Holst: You mean whether it covers the same property?

The Witness: Yes.

Mr. von Holst: No, not to my knowledge.

The Witness: And do they cover the property that was conveyed to me?

Mr. von Holst: That is my information. I haven't checked those documents lately, Judge.

The Witness: Yes, and so far as you know and these go, the property which was conveyed to me is clear, so far as these mortgages are concerned?

Mr. von Holst: At the time of conveyance?

3828 The Witness: Yes.

Mr. von Holst: I think so, in Orange County, Judge.

The Witness: Doesn't make much difference, anyway, I have got thirty-one hundred dollars, something like that, and a diamond he said cost three thousand or thirty-five hundred.

Mr. Harris: Are you through now? I observe that, I feel very happy that it transpires that counsel for the other side did have photostatic copies ready against the eventuality of our demanding them in connection with the Eustis Packing Company.

Mr. von Holst: If the Master please, we have here photostats of the ledger sheets of the Battle Creek Sanitorium, which were not produced by Mr. Herrell because they were in the possession of the Government. Now, these exhibits were subsequent to that time produced. I don't know whether it will be necessary to recall Mr. Herrell for that purpose or not.

Mr. Harris: Let's see them and we will let you know Monday.

Mr. Neuman: 129 and 146. 3830

Mr. Harris: They are bills?

Mr. Neuman: These are the missing sheets that he didn't have.

Mr. Harris: All right, we will take them subject to any correction.

The Master: All right, they may be admitted subject to any correction to be made hereafter by counsel.

Mr. von Holst: We offer this as Amici Exhibit 133.——

Mr. Neuman: That is the one for J. W. Davis. That is 129; and the sheet for Mr. Morgan Kaufman as 134; that is 146. 3831

(Photostatic copy of ledger sheet of Battle Creek, Incorporated, for Judge and Mrs. J. Warren Davis, from February 16 to February 22, 1936, was marked Amici Exhibit 133.)

(Photostatic copy of ledger sheet of Battle Creek, Incorporated, for Mr. Morgan Kaufman, from February 16, to February 21, 1936, was marked Amici Exhibit 134.)

Mr. Harris: Is that all?

Mr. Thiess: That is all, yes.

Mr. von Holst: Direct examination closed.

Mr. Harris: I did want to ask Mr. Thiess and Mr. von Holst if they have the close-out letter of the St. Augustine Bank account that is referred to in these photostatic copies that you submitted to us. You don't have that?

Mr. Thiess: No.

Mr. Harris: That is the one where Judge Davis says they apologized for making the mistake.

The Witness: No, that was the Miami Bank, not
3833 the St. Augustine.

Mr. Harris: Whatever bank it was.

The Witness: That was the Miami Bank, First National Bank of Miami.

Mr. Harris: All right, I don't care what bank it was, that was the letter explaining that your address as Palmer House, Chicago, was an error?

The Witness: Yes, I will see if I can find those letters. I perhaps have them.

Mr. Thiess: If you have and will send them to us, or send them to the Master, we will see that they go in.

The Witness: That is all right.

3834 Mr. Harris: The bank statement itself shows a charge of fifty dollars, that you referred to,——

The Witness: Yes.

Mr. Harris: —on March 9, 1937, and as of the same date a credit of fifty dollars, so that it shows that they reversed the charge, whatever it was.

The Witness: No question about the fact, Mr. Thiess.

Mr. Thiess: I don't know.

Mr. Harris: You don't raise any question about that, anyway, you don't still claim he was in Chicago at that time at the Palmer House, do you?

Mr. Theiss: I don't think so, from this.

Cross examination by Mr. Harris:

Q. Judge Davis, I know you want to get away. So do I. If you will give me——

The Witness: May I state, you were talking about these registrations at the Battle Creek Sanitorium showing the registration of certain people, I had a number of other friends who were there at the same time, one of them Mr. Bast, the trust officer here in the Land Title and Trust Building, he was there, good friend of mine. I have never tapped the till of that trust company even yet. Morgan Kaufman wasn't the only one who was there. 3836

By Mr. Harris:

Q. Now Judge Davis,—

The Witness: Or even ask for a loan.

Go ahead.

By Mr. Harris:

Q. May I go ahead? A. Yes.

Q. I am going to ask you just a few questions, and to the extent that you can, answer them categorically. If you can't, make any explanation you desire. A. All right. 3837

Q. Were you bribed for your decision in the Root cases? A. I was not.

Q. Did anyone attempt to bribe you for your decision in those cases? A. No.

Q. Were you promised anything of value or any reward for any action you would take? A. No.

Q. Were you promised any reward for the action you did take? A. No.

Q. I understand you to say that during the pendency of the appeals and the motion for a re-hearing and the deter-

mination of the appeal and the motion for a re-hearing, and for a long time thereafter, you had not the slightest inkling that Mr. Kaufman was a counsel for the Universal Oil Products Company. A. No.

Q. Is that right? A. No, never—I didn't know it, and he never spoke to me about those cases, in his life.

Q. Now, did anyone on behalf of the Universal Oil Products Company, any lawyer or anybody else, ever ask you to decide that case in the company's favor,— A. No.

Q. —other than as lawyers might have argued before you in court? A. Nobody did.

3839 Q. And did you expect any reward? A. No, the only reward I expected was doing my duty and getting my pay from the Government.

Q. You expected no reward from either litigant? A. I certainly did not, and never got any.

Q. And you didn't ask for any after the determination came down? A. No, and never got any.

Q. And no one other than the lawyers before you in their briefs and in their open presentation in court, and such of your brethren on the bench, your two colleagues on the bench who discussed the matter with you, sought in any wise to influence your judgment or determination? A. No-

3840 body did, and I gave those cases my best unbiased judgment, uninfluenced by anything except the facts and the law.

Q. And as I understand it, you decided the case, the case was decided by the Court and assigned to you before you reached Florida, for which you left on January 17, 1935? A. They were assigned to me on the 18th, and it was sent to me in Florida.

Q. That was before you arrived? A. I assume—that was before I arrived, yes.

Q. That is what I said, yes, before you arrived. A. Now, I assume that I got it in Florida, but independently, I have no recollection at all.

Q. But in any event, the case had been decided at that time? A. Yes, it had been decided before they were assigned.

Q. And before you went to Florida? A. No opinion is ever assigned——

Q. That is all. A. ——before we reach a conclusion and decide what we are going to do in it.

Q. That is all, except Judge Davis, I am not your counsel, but I think it would be only fair if you have any statement that you desire to make at this time, to give you an opportunity to do so. A. I have nothing to say, any further 3842
than I have said, that I gave that case, as I did other cases of similar import, careful and serious attention, and gave it my best judgment, based upon the facts and the law, and nothing else.

By the Master:

Q. Judge Davis, did you ever suggest Mr. Kaufman's name to any litigant or any counsel as a person suitable to be retained in any cases in your court, or in the District Court? A. I do not recall. I might or might not have done so, I do not recall.

Q. You don't know? A. I have suggested names of counsel, if somebody asked me, I have suggested names of counsel, 3843
different counsel, who would be a good fellow for this case or that case, or had litigation. Just recently——

By Mr. Harris:

Q. Pending before your court? A. What say?

Q. Pending before your court? A. Not pending, just recently someone phoned and asked me who would be a good counsel from Pittsburgh, who would be a good counsel in a certain case, what court it was coming before I don't know, what kind of lawyer, and I have suggested—now,

3844 *J. Warren Davis—For Amici Curiae—Cross*

whether I suggested Mr. Kaufman, as I have other times, I do not recall now, Mr. White.

By the Master:

Q. You are certain you did not to Mr. Belknap or Mr. Halle or anyone connected with the Universal Oil? A. No, I did not, I never heard—this is not complimentary to the Universal Oil—I never heard, so far as I recall, the Universal Oil Company's name mentioned until it came into the office, I mean, came before us to—in argument, and I do
3845 not know now any person connected with that company. I don't know any of the lawyers connected with that company. So far as I recall, I never saw one of them before they came into court. I knew Judge Denison by reputation, but I have never seen one of them since.

By Mr. Harris:

Q. You knew Judge Haight, of course? A. Oh, yes, yes, I knew Judge Haight.

The Master: Anything further? Well, Judge Davis, we will let you go in good time today.

The Witness: Well, thank you very much.

3846 The Master: I suppose you have nothing more today?

Mr. von Holst: No, we have not.

The Master: Well, then, we will adjourn until Monday morning at ten o'clock.

(Adjourned until Monday, November 2, 1942, at ten o'clock A. M., Eastern War Time.)

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Monday, November 2, 1942, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois).

THORLEY VON HOLST, Esq. (77 West Washington Street, 3848
Chicago, Illinois).

Amici Curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois).

Counsel accompanying *Amici Curiae.*

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.)

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. McCULLOUGH, Esq. (100 Broadway, New York, 3849
N. Y.), representing Universal Oil Products Company.

Evidence on behalf of Amici Curiae (Continued)

CHARLES LEE STOKLEY was examined and testified as follows:

Direct Examination

The Master: Mr. Stokley, you have been called as a witness here.

3850 *Charles Lee Stokley—For Amici Curiae—Direct*

The Witness: I am just a little hard of hearing. How is that?

The Master: I say, you have been called as a witness,——

The Witness: Yes, sir.

The Master: —as you probably know.

The Witness: November 2nd, at ten o'clock.

CHARLES LEE STOKLEY, Sworn.

By Mr. von Holst:

3851 Q. Please state your name. A. Charles Lee Stokley,—C. L. Stokley.

Q. And where do you live? A. Mount Dora, Florida.

Q. You are testifying here pursuant to a subpoena served on you? A. Yes, sir.

Q. And that subpoena was served on you about two weeks ago? A. Ten days ago, possibly.

Q. And when did you leave Mount Dora to come up here to testify? A. Saturday morning, drove over to Sanford, and then taken the train from Sanford to Philadelphia.

Q. Did you come direct here from Mount Dora? A. Yes, sir.

3852 Q. Have you spoken with anyone concerning your testimony that you are to give here, between the time of the service of the subpoena upon you and your appearance here this morning? A. I have not.

Q. This subpoena called upon you to produce certain documents, Mr. Stokley. A. Yes.

Q. Have you read the subpoena carefully? A. I did, as best I could.

Q. When it was served upon you? A. Yes.

Q. And you noted what things were called for, did you? A. Yes.

Q. And have you in obedience to that subpoena brought with you all that you could find that was called for by the subpoena? A. Yes, sir.

Q. Will you let me see it, please? A. I will.

(The witness produced papers.)

A. (Continued) All that I have in my possession. The Government has my abstracts and deeds and contracts, and so on. All I have is just what I could get here. I tried to bring, gentlemen, everything that was pertaining to what you would want. This is what I have of the taxes paid on the 3854
property; and the pieces of property that was—you can count the number of properties there that I secured Morgan Kaufman with. This is some notes that I paid off for sanitary toilets on the property that I secured him with. This is from when we paid that on fertilizer, Armour and Company, Jacksonville. I have one car that isn't paid for, that is on the road now, right there, I have the discount, and so on (indicating).

By Mr. von Holst:

Q. What is the remainder? A. That is just the paper you sent me. 3855

Q. Oh, this is the subpoena? A. Yes, sir.

Q. Mr. Stokley, paragraph 4 of this subpoena calls for all correspondence or telegrams, either with Thomas H. Cooley, J. Warren Davis, Morgan S. Kaufman or any other person, firm or corporation, and all contracts in writing, memoranda, reports, records, books of account, receipts, diaries, writings and printing of every nature and of whatsoever date, or copies thereof if the originals are not in your possession, pertaining to the transaction with Morgan S. Kaufman, the ten thousand dollar transaction. Now, were you unable to find any correspondence whatever? A. The Government has all of those papers. There is thirty-five

3856 *Charles Lee Stokley—For Amici Curiae—Direct*

pounds of my abstracts and contracts and tax receipts and deeds and mortgage satisfactions, and so on, and they haven't returned them yet, and I wrote Walter H. Gahagan, asked him how long would they hold them, that I would like to get them, and they haven't been returned. I had all of the stuff that you require there, that I turned over to the Government.

Q. Yes, but I am asking specifically, Mr. Stokley, about correspondence. Now, before— A. I—

Q. Just let me ask you this—before October, 1935 you had quite a lengthy correspondence with Judge Davis, did you not? A. I did.

3857 Q. And some correspondence with Mr. Cooley? A. Yes.

Q. Have you none of that? A. I have not. The Government has it.

Mr. von Holst: May we take a moment, Your Honor, to go through these papers?

The Master: Yes.

Mr. von Holst: Do you want to look at these, Mr. Harris?

The Witness: That was the fertilizer, gentlemen, used on the Morgan S. Kaufman property (indicating).

3858 (The witness explained a paper to Mr. von Holst.)

Mr. Harris: I think, Mr. Redebaugh, you better take any comments the witness makes on those papers.

By Mr. von Holst:

Q. Will you restate that? A. The notes the gentlemen are looking at is notes that I made at the bank in Tavares to pay for sanitary toilets in the darky settlement that I had secured Kaufman, and I didn't have the money to pay for at the time to the State, and I made notes and they paid, my

bank paid the State, and later I redeemed them, when I sold the fruit.

Mr. von Holst: If the Master please, I think we might proceed and we can determine at the noon recess, after having decided among ourselves, whether there is anything among these papers that we think should be in.

The Master: Very well.

Mr. von Holst: And, of course, Mr. Harris may make a like determination.

By Mr. von Holst: 3860

Q. You are a cousin of J. Warren Davis, are you not, Mr. Stokley? A. Yes, sir.

Q. And when did you first become acquainted with Judge Davis? A. I have known him many years. I should say—came up to see him along about when I was twenty-five years old, possibly, to Philadelphia, he was in the Weightman Building then, law practice, just stopped over one day with him, and saw him again five years later.

Q. When was that first time, about? I don't mean month, or day, but about what year was it that you first met him? A. I am very near seventy, and I was about twenty-five years old, so it is hard for me to determine just what it was. 3861

Q. Well, is it a fact that you first became well acquainted with Judge Davis when he started going to Florida in about 1930? A. Yes, sir, met him at the Lakeside Hotel; and he came over and looked me up, walked over one afternoon from the hotel.

Q. Well, this was in 1930? A. I can't say as to the date, but it was along about the first time he commenced coming to the Lakeside Hotel. I think he has been there possibly three different seasons. I won't be sure about that.

Q. Then do I understand you that you first became well acquainted with Judge Davis when he started to go down to Florida for the winters? A. Well,——

Mr. Harris: That is not what he——

A. —I knew him better then.

By Mr. von Holst:

Q. You had known him before? A. Yes.

Q. And after he became Judge did you visit with him, and
3863 before he started going down to Florida? A. Once I was driving through up here with my wife, and I stopped over and saw him at Trenton then, I am quite sure he was Federal Judge then. That has been many years ago, I can't say just how long.

Q. But that was before he started going down to Florida—— A. Yes.

Q. —for the winter, is that right? A. Yes, it was.

The Master: Off the record,——

(Discussion off the record.)

3864 *By Mr. von Holst:*

Q. Did I understand you to say that you met Judge Davis one time when Judge Davis was practicing law in Philadelphia? A. Yes, sir.

Q. Where were his offices? A. In the Weightman Building.

Q. And he was a lawyer here in Philadelphia? A. Yes, sir.

Q. When was that? A. I was twenty-five years old or so, and then that has been many years ago, gentlemen, I can't say just exactly.

By the Master:

Q. You don't remember what year you came up here? A. At this time we are speaking of?

Q. Yes. A. No, sir, I do not.

Q. Well, what year were you born? A. I was born on the first day of January, in '75.

Q. '75? A. Yes, sir.

Q. That would be 1900, then? A. Yes, that would be about——

Q. Well, I was teaching in the law school in 1905, and Judge Davis was a student at that time, so he couldn't have 3866
been practicing law in 1900. A. Well, I guess it is—it is since that time. Pardon me, don't you possibly know when he practiced law here?

Q. It would be after 1905. I am not sure exactly of the date.

(Discussion off the record.)

By Mr. von Holst:

Q. Mr. Stokley, prior to 1934 you were the record owner of certain real estate in and near Mount Dora, Florida, were you not? A. Yes, sir.

Q. And in 1934 the Town of Mount Dora foreclosed cer- 3867
tain paving liens—— A. Yes, sir.

Q. —on some of your property, is that right? A. Yes, all that touched the paving. Might I say and not be out of line, in our State they can pave against your—against your wishes, or against your desires, or you can try to keep them from paving it, but they will pave anyway, if the general public thinks it should be, so they paved my property against my will and then foreclosed a paving lien, when I—I paid eleven thousand on the amount of paving, it was all I had, and then they accumulated interest, I couldn't keep that up, so they foreclosed on me, in my borough, in the Town of Mount Dora.

3868 *Charles Lee Stokley—For Amici Curiae—Direct*

Q. And that was in 1934? A. I am quite sure that is just about——

Q. You contested it, did you not? A. I tried to.

Q. In the courts? A. Yes.

Q. Was that the assessment that you contested, or the foreclosure? A. Well, I—no, let's see, now, I contested being paved, out in that farming section, we call our groves, the same as you would call farms, because I didn't—we had already paved a strip that give me a hard road, and the public a hard road, past my place, but they wanted to widen it and curb it, and that is what cost us so much.

3869 Q. And you contested in the courts, did you not? A. No, in the council only.

Q. And didn't you take a case to the Supreme Court of Florida? A. No, sir.

Q. You did not? A. I didn't have money enough to, after I had paid all I had on the paving.

Q. Now, at the time of your troubles with the Town of Mount Dora, in 1935, when they made this assessment and foreclosed,—— A. Yes.

Q. In 1934, I should have said, that is when they actually foreclosed on you, isn't it? A. I believe it is the date.

3870 Q. —did you tell Judge Davis about your difficulties?

Mr. Harris: At that time?

By Mr. von Holst:

Q. That is, in 1934. A. I had it in my mind it was '35. It must have been in '34. They had foreclosed on the paving lien—let me try to make it plain—he walked over and was going through my groves with me one afternoon——

Q. Now, wait a minute, will you fix the date?

Mr. Harris: Well, he said he had it in mind it was '35.

Mr. von Holst: Well, unless Mr. Harris has any objection to the form of my interrogation I suggest, if the Master please, that he do not interrupt.

Mr. Harris: Well, I think that when the witness has said it once and then he tries to trap him by asking him again——

Mr. von Holst: I am not trying to trap the witness, I am trying to fix a time, and I object to a statement of that kind made in the witness' presence.

The Master: I didn't understand him to say it was 1935. I might have misunderstood. 3872

Mr. Harris: He said, "I had it in mind it was 1935, but it must have been 1934," because Mr. von Holst made some suggestions to him.

By Mr. von Holst:

Q. Mr. Stokley, there are two things I want to get clear. In the first place, it is your best recollection now, is it not, that the Town foreclosed in 1934? A. Gentlemen, I have such a poor recollection as to dates, but that certainly must be the time that they foreclosed, according to the time that I got the loan.

Q. It was the year before you got the loan that they foreclosed, was it not? A. Yes, yes, they had taken my fruit to help to pay on the paving. 3873

Q. Now, then, let me put it this way, when did you first talk to Judge Davis about your difficulties with the Town of Mount Dora on this paving matter and the foreclosure? A. Well, let me state it like this, about a year after they had foreclosed on my paving lien, the following season.

Q. And where was this? A. In one of my orange groves, he had walked over from the hotel, which would only be about a fourth to a half a mile, over to my place.

Q. Yes. A. Around the lake shore.

Q. And you told him that you were having troubles with the town of Mount Dora? A. Yes, I told him that they were foreclosing on me and was it possible that he knew of anyone up here that could make me a loan.

Q. By "up here" you meant up North? A. Yes, I couldn't do it in Florida because we were all broke down there.

Q. Had you tried before you talked to Judge Davis about this loan to get a loan—— A. In Florida?

Q. —in Florida? A. Now, let me see, gentlemen, I can't state that I knew anyone, I don't—I did try the bank, possibly, and they said, "Charlie, we are loaded up now."

3875 Q. Now, coming back to this conversation with Judge Davis, to the best of your recollection just when was that? Was it in the winter? A. Oh, yes, it was during the month of February, I believe.

Q. That would be February, 1935? A. I believe so.

Q. And was Judge Davis on his way down to Miami Springs at that time? A. I couldn't say. He was a tourist at the Lakeside Hotel.

Q. Well, didn't you know, then, at the time, that he was on his way down to Miami Springs or to Miami? A. He may have told me that he was going on down to Miami, but I don't—I don't recall just now that I knew for sure that he

3876 was going farther south.

Q. And you asked Judge Davis if he could get you a loan, is that right? A. That is right.

Q. And what did he tell you? A. He said it was possible, that he would see a friend, or he would see—he didn't use the word "client"—he would see what he could do.

Q. Well, did he say where this friend was? A. No, sir.

Q. How long did Judge Davis stay at Mount Dora at that time? A. Now, gentlemen, I couldn't say, I was working hard every day on my farms and groves, and possibly three weeks, maybe a month.

Q. At Mount Dora? A. Yes, sir. I could have got that information, though, from the books at the Lakeside Hotel. Mr. Edgerton would have given me that, if I had known you would have asked that question.

Q. Well, Mr. Stokley, the records, the ledgers of the Miami Springs Battle Creek Sanitorium show that Judge Davis arrived there on January 31, 1935.

Mr. Harris: And left——

By Mr. von Holst:

3878

Q. Now, I want to ask you, in view of that, whether it is not possible that you are mistaken that he stayed at Mount Dora for four or five weeks. A. Gentlemen, I could be. I am trying to tell it as best of my memory. I had an idea it was in February, but if he were there, of course, it was in January that I had a conversation with him, but I thought it was later.

Q. Yes. A. In the season.

Q. And isn't it true that you had this conversation with him when he was on his way down the State to Miami? A. It could have been.

Q. And he didn't stay there at Mount Dora but for a day or so, a short time, and then went—— A. It seems——. 3879

Q. —on down? A. It seems to me he was there several days, he was over home frequently, and I told him, help himself to fruit, and he said they had a-plenty of it at the hotel, but I did have some blood oranges that were splendid.

Q. But it may have been only several days he was there, on his way down to Miami, isn't that so? A. I won't say, because I never kept any——

Q. Well, now, let me ask you, did you see Judge Davis again several weeks later, when he was going north again, to go home? A. I believe he came by and stopped at the Lakeside Hotel again, I think the records will bear me out

with that, but I don't recall how many days he stayed, but he came back by in the spring, from Miami, possibly.

Q. That was about six weeks after your first contact with him that you testified to, isn't that right? A. Well, I wouldn't say, because I don't remember as to how long he was gone. I didn't realize that he had stayed that long down there, but possibly he did.

Q. Well, at any rate, he saw you going down to Miami? A. Yes.

Q. And he saw you coming back from Miami? A. Yes.

Q. Is that right. A. Yes.

3881 Q. And on his way down to Miami you asked him if he could get a loan, is that right? A. That is correct.

Q. Now, then, did you talk to him about this loan on his way back from Miami, when he stopped on his way back? A. It seems to me that we had—that I asked him again, that, "When you get North, try to get me a loan."

By the way, in coming back I did give him some orange blossoms, taken them down to the hotel for him, I believe, and had this short talk with him.

Q. Well, there was more said than that, wasn't there, on this second occasion? A. I couldn't say just what—I don't remember just what was said.

3882 Q. Now, on this second visit which you had with Judge Davis, on his way back from Miami, didn't you take him to see Mr. Cooley, and Mr. Cooley was ill? A. No, sir, no, it wasn't at that time, I never taken him to see Mr. Cooley—I think it is the loan that you are speaking of, of four thousand. That was a year later.

Q. I am now talking, Mr. Stokley, of your first talks with Judge Davis about the loan. Now, you say that on his way back from Miami you talked to him again about a loan, is that right? A. I believe I did.

Q. Now, what did he say to you? A. Gentlemen, it seems that he told me that, "If I can get a loan for you I will write

you or wire you, and you come up to Trenton and bring your tax receipts or papers showing what you have to secure the party."

Q. Now, we are talking about the early spring of 1935, when Judge Davis was coming back from Miami, going North, back home. A. Yes.

Q. Now, did he tell you who he was going to get the loan from? A. No, sir.

Q. Didn't he mention Mr. Kaufman's name at that time? A. I don't believe he did. He did later, after—did he write me that?—yes, I fully believe that I would be telling the truth if I say he mentioned that, if he wrote me to come up 3884
there, that a Mr. Kaufman would loan me ten thousand dollars, if I could make a composition for that in court.

Q. And that was on this second time that you talked to Judge Davis about the loan, is that right? A. Yes, sir. Now, gentlemen, that is exactly as best I can remember.

Q. Now, this was before Judge Davis wrote you anything about coming up North with the papers, isn't that right? A. Yes, sir, that is correct.

Q. So at this conversation, when Judge Davis first mentioned Kaufman, all that he told you was that he was going to get the loan from Mr. Kaufman, is that right? A. I believe so. That is my full belief. 3885

The Master: I think the witness said that Judge Davis told him that Mr. Kaufman would loan him the money on that occasion, didn't he?

By Mr. von Holst:

Q. Did Judge Davis tell you that Kaufman would loan you the money on that occasion? A. If I could secure him and make it—make him satisfied that he would get enough security—I couldn't swear that but what he wrote me about getting me a loan through a Mr. Kaufman, if I brought the papers.

Q. I am not talking about a letter, Mr. Stokley, I am talking about this second conversation, when Judge Davis was coming up from Florida. Now, regardless of any letter, Judge Davis told you then, did he, about Mr. Kaufman? A. It seems to me that he mentioned Kaufman's name. I had never met him, you know.

Q. Now, did he tell you then that Mr. Kaufman would make the loan if you had the value there, if the title was good and if the security was good? A. I believe that would be absolutely correct, as to the best of my memory.

Q. And this was in conversation,— A. Yes.

3887 Q. —regardless of any letters that may have been written afterwards? A. Yes.

Q. Now, on this same occasion, when Judge Davis was going north again from Miami, and you had this talk with him that you have testified; did Judge Davis tell you that Morgan Kaufman had been down at Miami Springs at the Sanitorium? A. I can't say.

Q. Didn't he tell you that? A. I don't believe he did.

Q. Let me ask you this, at that first conference with Judge Davis, when he was on his way down to Miami Springs,— A. Yes.

Q. —and you had this talk with him in the grove about

3888 a loan,— A. Yes.

Q. —did he tell you that Mr. Kaufman was going to be at Miami Springs? A. No, sir, he told me that he would see if he could get it from either a friend—I won't testify now that he said "client", but I thought he meant some friend that he knew up here.

Q. So it is your recollection that he did not mention Morgan Kaufman's name— A. No, sir.

Q. —on the first occasion? A. That is right.

Q. But that he did on the second occasion, on his way back? A. That is the way my—my recollection runs now, that he did. Gentlemen, just a minute, kind of bear with me.

two years ago my mind was as clear as any young fellow's, but I was kicked by a young mule and come very near losing my life, and it will be a little slow, but I have nothing to withhold, and anything that I can—you will have to be a little patient with me on my questions.

The Master: That is all right, Mr. Stokley, we will give you all the time you need.

The Witness: That is it.

By Mr. von Holst:

3890 Q. Now, Mr. Stokley, you saw Judge Davis again about the loan some time later, did you not, in the fall of 1935, when you came up to Trenton? A. The next I saw Judge was after receiving a message that if I would come up and could show credentials, or whatever you gentlemen would term it, it is possible he could get me the loan.

Q. Yes, now to the best of your recollection, wasn't that in the fall, about in October, of 1935? A. About then, it was in the—in the late summer or fall.

Q. Now, you did come up, didn't you? A. Yes.

Q. To Trenton? A. Yes.

Q. And you met Judge Davis then? A. Yes.

3891 Q. And you had not seen him between that occasion, when he was going north from Miami, and the occasion when you came up to Trenton, is that right? A. That is my belief, I don't recall—I am quite sure he never came back.

Q. And you weren't up north—— A. No, sir.

Q. —in 1935? A. No, sir, not until this trip that he——

Q. Until you came north to go to Trenton in the fall? A. Yes.

Q. Is that right? A. That is correct.

Q. Mr. Stokley, when did you first talk to Mr. Cooley—who was the attorney for the Town of Mount Dora, wasn't he? A. Yes, sir.

Q. —about the possibility of redeeming your property? A. I think I talked with Tom during the summer, possibly, during the summer months, after having conferred with Judge Davis, that if I could get a loan, do the best he could for me on getting a composition with the Town of Mount Dora, getting it compromised for as little as I could.

Q. To the best of your recollection, you had not talked to Cooley about redeeming until after you had had these two conversations with Judge Davis, is that right? A. I don't believe, because I hired Tom, he charged me two hundred dollars, and the Town was paying him also, so he
3893 worked for my interest and worked for the Town's interest. That is our Florida lawyers!

Q. Now, the first figure that you tried to get the Town to settle for was seventy-five hundred, wasn't it? A. Yes, sir, and he thought possibly eight thousand, at most, but he either tipped the council off that I was in shape for getting a loan, so they went up to ten thousand, so he was working for his Town all right.

Q. That was one of the times he was working for the Town, is that right? A. Yes.

Q. Well, let me ask you, Mr. Stokley, had you told Cooley that you thought you could get a loan through the Judge,
3894 through Judge Davis? A. I told Cooley as best I could that Judge was trying to get me a loan.

Q. And when did you tell him that? A. I couldn't say, gentlemen, I wish I could tell you exact date, but it was during that summer, possibly, before I got the loan.

Q. Did you tell Cooley that Judge Davis was trying to get you a loan after your second talk with Judge Davis on his way back from Miami? A. I believe that is right.

Q. How soon after that second talk did you tell Cooley that Judge Davis was trying to get you a loan? A. It wasn't long after that.

Q. Yes, and was it after you told him that, that he raised the ante on you to ten thousand? A. Yes, at the next council meeting.

Q. And that council meeting was early July, was it? Or don't you remember? A. I couldn't say, June or July.

Q. Now, then, after the Town raised the price, or, rather, gave you an offer of ten, that was their lowest, wasn't it? A. Yes, that was the last.

Q. Finally? A. Finally.

Q. And they said they would settle for that? A. Yes.

Q. Now, did you communicate that fact to Judge Davis? A. I don't recall, it seems that I—yes, I did, and it seems there was some misunderstanding, I got a letter from Judge, "Why, you say you only needed seventy-five hundred or eight thousand." There was something in regards to that, I can't say just what that was. 3896

Q. Well, we will come to that in a minute, Mr. Stokley. Just to refresh your recollection, I show you some correspondence here, Amici Exhibit 109, and I refer you to a letter of July 11, 1935, signed "Paul", and on the letterhead of Paul C. Stokley, Attorney and Counsellor at Law, Portsmouth, Virginia. He is your son, isn't he?

(The witness examined the letter.)

A. Yes, sir. Just a moment, now, let me explain, this son acted in the capacity of a stenographer. I was up there trying to dispose of some oranges on the Norfolk market, and got this message from Cooley, it seems, there, and Paul did the writing for me. 3897

By Mr. von Holst:

Q. In other words, Paul didn't represent you—— A. Not at all.

Q. —in this matter at all? A. And for ten years he didn't know anything about my business, in a way, he has had his hands full down in Norfolk.

Q. All right. Now, then, Mr. Paul Stokley writes the Judge, Judge Davis, and says:

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"I find that Dad has gone out to spend the night with his Dad and Mother, and left the enclosed letter from Mr. Cooley with a request that I forward it to you for your information."

And the enclosed letter is, is it not, this letter of July 8, 1935, from Cooley to Stokley, in which Mr. Cooley tells you that:

"Last Tuesday night the Town Council of Mount Dora voted to deed back to you all of the town's
3899 rights in your property taken over under paving foreclosure for the sum of Ten Thousand Dollars cash. This means that the Town will cancel paving and taxes up to date and give you a quit-claim deed. You will have to assume the County taxes. This figure also includes the $1700.00 the town has already paid on State and County taxes."

A. And this left me twenty-eight hundred to pay.

Q. Well, his letter doesn't say anything about that, does it? A. No, sir—well, he says it left the State and County taxes to pay, but the Town had paid seventeen hundred on
3900 them, which would run it up, you see, to more than three thousand, four thousand.

Q. Well, did you know on July 8th, when Cooley wrote this letter to you, what the State and County taxes were, in addition to the—that is to say, entirely apart from the paving lien taxes? A. I may have looked into that, or it is possible that I had a statement sent to me from the—the property was still in my name, you see, there was a lien against it, but they would send me a statement of the taxes due, so I may have known at that time. I don't—I don't know just what to state there. Who was Paul writing to there for me?

Q. This next letter that you refer to seems to be July 18, 1935, and is Judge Davis writing to Paul. A. I see.

Mr. Harris: Now, let's see that.

By Mr. von Holst:

Q. Well, you recall getting this letter from Cooley of July 8th, 1935? A. Yes, I recall that.

Mr. Harris: But I don't see Paul's enclosing letter. What was the date of that?

The Witness: This is the one he is speaking of, isn't it (indicating)? 3902

Mr. von Holst: No, Paul's enclosing letter is July 11th, the one immediately preceding.

Mr. Harris: Oh, yes.

By Mr. von Holst:

Q. And then when Judge Davis got Paul's letter of July 11th, 1935, enclosing Cooley's letter of July 8th, Judge Davis wrote you on July 18, 1935, did he not?

Mr. Harris: Wrote Paul, didn't he?

The Witness: Wrote Paul, yes, sir.

3903

By Mr. von Holst:

Q. Wrote Paul, I beg your pardon. Now, did you get—— A. Now, the reason——

Q. Did you see this letter? A. The reason why——

Q. Just a minute, I just want to ask you, first, did you see this letter of July 18, 1935, that Judge Davis wrote to Paul? A. I must have seen it, gentlemen. I was up there, selling oranges, and that is why Judge wrote to Paul, I guess, expecting me to be in the city of Norfolk.

Q. And then you wrote Judge Davis, on Paul's stationery, on July 20, 1935, did you not? Is this your signature?

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(The witness examined the letter.)

A. Yes, it must be.

By Mr. von Holst:

Q. C. L. Stokley. A. Yes, that is mine.

Q. That was when Paul was acting as your—— A. Stenographer.

Q. —stenographer? A. Yes, sir, that is as foreign to me, but it comes back to me.

3905 Q. Do you want to read that letter? A. No, sir, there is nothing but what I am quite sure I scribbled out as best I could.

(Discussion off the record.)

Mr. von Holst: I ask that a copy of this letter, a photostat of this letter of July 29, 1935, from Cooley to Stokley, be marked for identification as Amici Exhibit 135.

(Photostatic copy of copy of letter dated July 29, 1935, from Mr. Cooley to Mr. Stokley, was marked Amici Exhibit 135 for identification.)

3906 *By Mr. von Holst:*

Q. Showing you this photostat of a copy of a letter, marked Amici Exhibit 135 for identification, did you get the original of that letter from Mr. Cooley? Just read it over. A. I am quite sure I got that letter from Mr. Cooley and it was to clear up the title of the property there, you see Sawyer's name on some of your tax receipts, and that is just because they hadn't put it on record as I had paid for it. I think I have the deed in my Government files that shows that this was put on record, but to make it secure, Tom wanted a quit-claim deed to it from these people so that the chain of title would show clear.

Q. Who is John Wilkins Sawyer, Mr. Stokley? A. He is a gentleman in Norfolk that I got a loan from some years ago, and then I had a satisfactory to a mortgage from him, and gave it to my county clerk and paid for it to be put on record. It seems there that it wasn't on record, and I noticed in some of the State road, wanting a foot of land more, they asked for a quit-claim deed from John Wilkins Sawyer, which he sent me right away, and says, "Why do you send for this, when I gave you a deed that you put on record", or satisfactory to a mortgage. It is just simply an error in the county clerk's office, I am quite sure.

Q. You had gotten a loan from John Wilkins Sawyer 3908
some time before—— A. Some years before.

Q. —35? A. Yes, some years before that, possibly in '23, I believe.

Q. And let me ask you, by the fall of 1935 had you paid off all that indebtedness—— A. Yes.

Q. —to Sawyer? A. Yes, had a satisfactory, we call, mortgage, and had put it on file, and it seems that it didn't show on the records.

Q. Did you handle that satisfaction personally, or did you handle it through an attorney? A. I handled it personally.

Q. Are you sure that you ever filed a satisfaction of that 3909
mortgage? A. Quite sure, yes.

Q. Isn't it a fact that that mortgage to—— A. Sawyer?

Q. —Sawyer, John Wilkins Sawyer, was in the form of a deed? A. I believe so, same as I gave Kaufman.

Q. Yes. A. You see, to keep from foreclosing, then he quit claimed it back to me—I beg your pardon, I am wrong, it was a quit-claim deed that I received from Sawyer and wife, instead of satisfactory.

Q. Well, this deed to Sawyer covered more property of yours, did it not,—— A. Yes.

Q. —than was covered by the foreclosure of the Town of Mount Dora? A. Yes, yes, it did.

Q. Now, this quit-claim that is referred to in this letter of July 29, 1935, Amici Exhibit 135 for identification, only covered the property which the town had foreclosed on, isn't that right? A. That is all he asked me to get.

Q. Yes. A. Just what the town—so as to clear up the title.

Q. For the town? A. For this loan, yes, sir.

Q. Well, what I want to know is, did you ever get a quit-
3911 claim from Sawyer on the balance of the property that was not covered by the town foreclosure? A. Prior to this I got a quit-claim from Sawyer for all the property that I had deeded to him for security.

Q. Did you record that? A. Yes. As soon as I get the papers from the Government, I thought I would take it over to the clerk and show him what book and page they had recorded it, and why was it they keep bringing this up. They brought it up in a road request, the Government wanted a foot off the road.

Q. I might say, Mr. Stokley, that the reason I ask these questions is that according to a search that we have made the quit-claim which you say you got from Sawyer—— A.
3912 Yes.

Q. —for the balance of the property that was not foreclosed or not covered by the deed from the Town of Mount Dora has never been recorded, so maybe that is something you want to look into. A. Thank you, sir.

Mr. von Holst: I offer in evidence this letter of July 29, 1935, from Cooley to Stokley, as Amici Exhibit 135.

(Photostatic copy of copy of letter dated July 29, 1935, from Mr. Cooley to Mr. Stokley, previously marked Amici Exhibit 135 for identification, was marked Amici Exhibit 135.)

By Mr. von Holst:

Q. Now, referring to this letter again, Cooley asks you to furnish Judge Davis with any detailed information he may want. Now, after you received that letter of July 29, 1935, did you furnish Judge Davis with any detailed information? A. I couldn't say. It seems that I had furnished him with all of that before this letter, I couldn't say.

Q. Well, Cooley had written Judge Davis on July 29, 1935, giving him information about this property. A. Yes, sir.

Q. Is that right? A. Yes, sir. 3914

Q. I show you a photostat of that letter. Did you see the letter before Cooley sent it to Judge Davis?

(The witness examined the letter.)

A. I don't—I think—what date was that, now, please, sir?

By Mr. von Holst:

Q. July 29, 1935. A. I think I was in Norfolk selling oranges at Virginia Beach at that time.

Q. As appears from Amici Exhibit 135, where Cooley writes you at—— A. Portsmouth.

Q. —Portsmouth, Virginia? A. Craddock is my son's 3915 home.

Q. Well, after your return I suppose when you got back to Mount Dora you asked Cooley whether he had given any information to Judge Davis on this subject? A. I possibly went to see Cooley to see what the status of things—how he was getting along with the transaction.

Q. And did he then tell you that he had written Judge Davis, and show you this letter of July 29, 1935? A. I couldn't say whether he did or not. We may have just talked it over.

Q. Well,—— A. I don't know that he showed me the files or anything.

Q. Do you recall checking these descriptions with him, with Cooley, that appear in this letter of July 29, 1935? A. Well, these were the descriptions of the property that was in question, that the paving lien was against.

Q. Yes. A. So I knew about the certain blocks in the town.

Q. Mr. Cooley says in this letter, Mr. Stokley, that Block 422 is the home block with dwelling house and grove. A. Yes

Q. Do you know of your own knowledge that that is accurate? A. Yes, that is correct. May I just explain to the gentlemen, where this speaks of numbers of blocks, that is

3917 two and a half acres, and four of those blocks makes a ten acre orange grove, and during the boom I could have had them all cut up and possibly not been in this mess, and still they would be more than—leave this off the record. I didn't sell during the boom, and they paved it against my wishes and I had all this burden to carry. City property would be as grove property if they hadn't divided it up in city blocks

Q. In other words, your point is it was worth more without the roads than with them? A. Yes, sir, that is true.

Q. Yes. What road does your house face on? A. Grandview.

Q. Grandview. Now, does Grandview run into some

3918 other street? A. Well, it runs clear across town, Grandview Avenue, and Donley Avenue, and so on.

Q. Your house faces in what direction? A. Faces east.

Q. And is on the west side of the road, then? A. Yes, it the home grove, orange grove.

Q. And is the Pet Grove right adjoining the home grove A. No, sir, that is a choice spot down in a hammock, that is wonderfully protected from cold.

Q. Is that another block? A. Yes, it would be like, this would be twenty acres—let's see, all that is going on record I am trying to explain to you.

Q. Well, we can show you a plot, if you like. A. Well this Pet Grove is at the west end of my home place.

Q. That is what I wanted to ask you. A. Government lot number 2.

Q. That is sufficient. Now, when did you first meet Morgan S. Kaufman? A. In Judge's chambers, would you call it, in his law rooms, in his chambers.

Q. And that was in the fall of 1935, is that right? A. Quite sure that is right.

Q. Now, how did you know that you were to come up? A. Judge Davis, my recollection is that he either wrote me or wired me, I won't be sure which.

Q. Is it possible that he called you? A. No, sir, he never 3920
you mean over the phone?

Q. Yes. A. Oh, no, no, he never called me.

Q. You haven't been able to find that letter or wire? A. I do think—I turned over my files, my desk, everything, to the—is it F. B. I. man, or F. V. I. man, a gentleman from Texas, and he got them all up, and I paid the mailing on them, to get them up to Gahagan, and there was about thirty-five pounds of it, so these could have been—I turned all the letters and everything over.

Q. You haven't got it now? A. No, sir.

Q. Now, prior to coming to Trenton on this occasion had the Judge told you to be ready to come up? A. I believe 3921
that is right, I believe he had, when I was down at Norfolk, at Paul's, it is possible he said that if he got the loan for me to bring—I don't know what word he used—to bring tax receipts and all to show the valuation of the property.

Q. And he told you to be ready to come up when he would call you, is that right, or when he would notify you? A. Yes.

Q. And did he first tell you to be ready to come up some weeks before you actually came up? A. I don't think so, I think I come shortly after he had negotiated the loan.

Q. Now, you had got your papers in shape with Cooley some time before you came up, had you not? A. I don't be-

3922 lieve I got any help from Cooley in getting up my papers. I taken certain lots that I knew and I got a real estate man to value them, I believe, and a banker, I don't know whether there is any record to that effect or not; and then I brought what the real estate man valued them, valued this much property.

Q. Now, I would like to refer you to a letter of Mr. Cooley to Davis, Judge Davis, on September 25, 1935, in which he says:

3923 "Before I went away I prepared everything necessary to close the loan to Mr. Stokley on the basis with which you are familiar."

Now, does that refresh your recollection that Cooley as of the latter part of September had prepared the—— A. Papers for me to take with me?

Q. No, I didn't say that; the papers which, as he says, would be necessary to close the loan, the necessary papers for closing the loan. A. I never got any documents, any papers, any description of property or valuation, from Cooley, I just came right on with what—what I got up myself, I am quite sure.

Q. Now, in the last sentence of that letter—well, I will 3924 have to go back to the next to the last:

"So will appreciate your advising me by return mail if you are ready to go ahead. If you are will be glad to furnish you the necessary papers and information and a guarantee title policy in a good reliable New York Company guarantying the merchantability of the title to this property."

Now, that shows that Mr. Cooley was getting the stuff together, doesn't it? A. Yes, it does.

Mr. Harris: If you will pardon me, off the record.

(Discussion off the record.)

By Mr. von Holst:

Q. In other words, Mr. Stokley, Cooley did not get all your valuation papers and appraisements and all that stuff? A. No.

Q. But he did get together some of these things that he mentions here, guarantee title, and the deeds,—— A. The best of my recollection,——

Q. —and stuff like that? A. —I never saw Tom for possibly some days before I came up, and the message was direct to me from Judge, you may have records there, and I came—— 3926

Q. Yes. A. —at once, and all the data I brought, I got it up myself, I am quite sure.

Q. Well, did you have any talk with Cooley back in September about the—— A. How he was getting along?

Q. Yes. Well, you knew by then that he would close for that amount, didn't you? A. For the ten thousand?

Q. Yes. A. I knew he had gone up the two thousand.

Q. Well, did you know in late September that Cooley was communicating with Davis about having these papers ready to close the loan? A. Gentlemen, I could truthfully say I didn't know in regards to the correspondence of Cooley and Judge, because I stayed in Norfolk until after Labor Day, that is when the hotels close at Virginia Beach, and I 3927 sold fruit up to then, had them stored, and was selling fruit each day, so this is practically new to me, because the Government never showed me any of this stuff, of course.

Q. Well, I am only asking you for your best recollection, and I am just showing you some letters Judge Davis produced, —— A. Yes.

Q. —you understand. A. Yes.

Q. It is a fact, isn't it, Mr. Stokley, that in the summer of 1935 you were anxious to get this loan closed as soon as possible, because you wanted to save your fruit? Now, isn't

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that right? A. That is why I had Paul writing letters for me to Cooley and to Judge Davis.

Q. In other words, it was to your interest to close this thing as soon as possible, isn't that right? A. Yes, sir.

Q. Did you ever ask Cooley to prepare the title insurance policy? A. And he never has, as far as my knowledge. I didn't know anything about any insurance policy that Cooley had. I thought it was from Lake County Abstract Company, that got up all the security that was on Kaufman's property.

Q. You never knew that there was a guarantee policy? A. We didn't call it that. I thought it was Lake County
3929 Abstract and Guaranty Company, or something.

Q. Yes. A. A company there in——

Q. Well, did you ask Cooley anything about either an abstract or title policy, to do anything for you with respect—— A. Well,——

Q. —to either one? A. —it is possible that I expected this two hundred to pay him for looking into this, and as to verbally just what I told him, I couldn't say.

Q. Well, you knew that there was an abstract on your property, did you? I mean abstract of your property. A. I had an abstract ever since then, back to when it was homestead.

3930 Q. And what company was that? A. Lake County Abstract Company. It is an old company, that has been in our county for years.

Q. Yes, now, what I want to know is, in addition to that abstract, in connection with the papers that were got together for the closing of this loan, did you order a title guarantee policy in the Lake Abstract and Guaranty Company? A. I had an idea that he just continued my abstract, gentlemen, to bring it down to date, from the date that I got it, in, oh, back in 1900, and that they would bring it down to date, and the expense would only be the different entries

that they would have to have. This is foreign to me, as far as the New York company.

Q. Well, I think what Mr. Cooley is referring to there, in a good, reliable New York Company, is that that is the parent company of the title company that issued the title guarantee policy, but, as I understand your testimony, you yourself did not know about this title guarantee policy, is that right? A. I have no recollection of anything but the Lake County Abstract Company.

Q. Abstract Company.

Mr. Harris: You mean in September, prior to the 3932
closing? Is that what you mean? I don't mean to ask Mr. von Holst.

Mr. von Holst: I will clear that up.

Mr. Harris: Yes.

The Master: My recollection is that the testimony already in showed that the Lake County Company was an agent of another company.

Mr. Harris: Of a Jacksonville company.

The Master: Some other.

Mr. Harris: Florida Title and Trust Company, or something of that sort.

The Master: Yes.

3933

By Mr. von Holst:

Q. At the time did you know that there was a title guarantee policy?

Mr. Harris: At what time?

Mr. von Holst: At the time of the closing of the loan.

A. I have before stated that I knew that I had an abstract to the property, the original abstract, and all it had to be was continued, I guess you lawyers would call it brought down to date.

3934 *Charles Lee Stokley—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Now, did you tell Judge Davis in the summer of 1935 that you would stand to lose your crop unless you could get the loan? A. I believe I did. I was like a drowning man grabbing at a straw, I was trying to get some help.

Q. I call your attention to a wire which Cooley sent to Davis, a night letter which Cooley sent to Davis on October 3, 1935:

"Advise by return wire possibility for closing the
3935 Stokley deal with the town as town officials demand showdown at once stop if Stokley can get money now he will save several thousand dollars this year's fruit crop."

That is on the 3rd of October. Did you know at the time that Cooley was sending that wire to Davis? A. I did not, but it was—it was all right, he was still earning some of the two hundred dollars, I didn't know he was.

Q. This telegram was all right. A. I am quite sure, yes, sir.

Q. Now, I show you a telegram from Davis to Cooley dated October——

3936 Mr. von Holst: Will you give me Amici Exhibit 83, Mr. Rodebaugh? I am sorry, there is no photostat made of this yet. Oh, have you got one.

By Mr. von Holst:

Q. Now, I show you a photostat of a telegram, a day letter, sent by Davis to Cooley on October 4, 1935, reading as follows:

"The money has been definitely promised from a reliable source and I think it will be available in a few days."

Did Mr. Cooley show you that wire at the time. A. What date was this, now, October 4th?

Q. October 4th. A. I don't recall of seeing that wire, gentlemen.

Q. Well, did you know at any time before you came up to Trenton, had you heard from Judge Davis, that the money had been definitely promised? A. Well, I before stated he said for me to come up, that he had the money lined up for me, I don't know just what the words were, but he instructed me to come up, that they would—they would get the money, get the loan for me. 3938

Q. Well, let me ask you this further question. Before the time that he told you to come up, did he at any prior time tell you that the money had been definitely promised and that you had nothing to worry about? A. May have, gentlemen, but I couldn't swear to that, I wish I could, but I don't just——

Q. All we want is your best recollection, Mr. Stokley. A. That is the best I know, please, sir.

Q. Now, you did come up to Trenton on October 24, 1935, didn't you? A. Quite sure, that is about the date.

Q. And as you say, you came up in accordance with a message from the Judge? A. Yes.

Q. And you think that was either a wire or a letter? A. I 3939 do.

Q. Now, where were you at that time, when he called you? Were you at Norfolk, or down in Mount Dora? A. Mount Dora, I am quite sure I had gotten home at that time.

Q. I said when he called you; I mean, when he communicated with you. A. Yes.

Q. And you are quite sure that was not a telephone call? A. No, I wouldn't—I won't say, I don't recall, I didn't keep any——

Q. Well, your best recollection—— A. —record.

Q. —is that it was a letter or wire? A. Yes.

Q. And you got to Trenton, and where did you go? A. Went from the Pennsylvania Station up—was it Broad Street, the main street in the City of Trenton?

Q. Well, whatever it is, you went—— A. Well, at breakfast.

Q. Yes. A. Got in on the early morning train.

Q. Yes. A. And then went up to Judge's chambers, and he hadn't gotten in yet, and I walked back down the street, and came on up to his chambers and they were open, or, I won't say whether they were in session or what, but I talked with Miss Kliesh and she said I could see Judge later, so I
3941 take in the Town of Trenton, walked around for exercise, of course, and come back in the—I get my lunch before I come back, I am a great farmer for eating, so then I came back up, and Judge says, "Why, hello, Charlie," and he shook hands with me and told me that he had a party that would be there, that I won't say whether he said Mr. Kaufman or not would be there, about two o'clock, possibly.

"Well," I says, "then I will go back on my train, because I am trying to irrigate," it was fearful dry down there, so I—shall I go ahead?

Q. Yes; go right on. A. So I waited, and Mr. Kaufman came in, and Judge made us acquainted.

3942 Q. Now, this was at two o'clock? A. This was after two o'clock.

Q. After two o'clock? A. Yes.

Q. After you came back in the afternoon? A. Yes, I sit there and waited in the office of his stenographer and looked over my papers so to plan in mind as best I could present them, and then Mr. Kaufman came, as I aforesaid.

Q. Now, just a moment, if I may interrupt you, when Mr. Kaufman came in where were you and Judge? In his chambers, weren't you? A. Yes, in his chambers, but not in the—I don't believe I was in the place where Judge sits, seems that I was in where the stenographer was, but,——

Q. Well, at any rate,—— A. Anyway, they must have called me, I came in and met Mr. Kaufman.

Q. And you three were present? A. Yes.

Q. Judge Davis, Morgan Kaufman and yourself? A. Yes, sir.

Q. Is that right? Now, then, what happened then? A. Judge says, "What Mr. Stokley tells you, you can rely upon," and I exchanged words with Mr. Kaufman, I don't know, I showed him—told him I had brought the valuation of the property, and so on, and he says, "Well, we will go in here," and we walked in where there was a lot of law books, where 3944
—what do you call that, the law library or office?

Q. Yes. A. Across from where the Judge worked, and in there was a gentleman reading a law book, a young fellow, and Kaufman talked on with me, and looked over the papers, and called this fellow, I learned later was Mr. Lord, whether he called him in session, or called him to go over the papers with us, but, anyway, he got in conversation with Lord, and he says, "Mr. Stokley, I don't want this property, I am making the loan to you, of course,——

Q. That is, Kaufman said this? A. Yes—"for the interest, but," he says, "haven't you other property that you could put? At a forced sale I want my money out of it." 3945

Well, of course, that was—I already had enough property that a banker, a real estate man, thought was worth forty thousand dollars at a forced sale, but he seems to have been kind of hard hearted, he wanted a-plenty, and I says, "I have a Pet Grove that is free of all encumbrance, that I wouldn't take five thousand for, I will put that in."

He says, "What else have you?"

I says, "I have a cement building, a stone building, that is renting, stores."

"Well," he says, "you put that in and I will make you the loan."

I was trying to hold out some of these other properties in the event I needed a carload of fertilizer or something, I could put it up at the bank and get some fertilizer.

Q. So what you offered as extra security—— A. Extra security.

Q. —was the cement building and the—— A. Pet Grove.

Q. —Pet Grove, and that was all you offered? A. Yes.

Mr. Harris: Well, let him go on.

3947 *By Mr. Harris:*

Q. Is that the end of it? A. Yes, sir.

Q. Is that all you said? A. Well, we talked on, he drafted out an agreement, a contract, and he talked some more with Mr. Lord, as to just what he said to him—but Miss Kliesh drafted the papers for us, and it seems that she wrote them down on an agreement, and the agreement was that I was to pay twenty-five hundred dollars a year, and whether it is marked semi-annually, interest, or not, but I was to pay eight per cent interest.

By Mr. von Holst:

3948

Q. Now, anything else? A. Well, now, I went back on the train that day. It was a satisfaction to know that the money would be forthcoming.

Q. Was the thing typed up before you left, or not? A. I believe the outline of it was typed up, I mean, I believe the understanding and agreement between each of us was typed. Now, I won't be sure about that, but that is my recollection.

Q. Did you read it before you left? A. Yes, I tried to read it, of course, I—I have such a limited education, but I figured out as best I could that it was the right pieces of property that I were putting in, and the terms.

Q. And do you remember that that agreement had in it the property which the Town had foreclosed on? A. Yes.

Q. And the cement block and the Pet Grove? A. Which was free of encumbrance, these two groves, these two properties.

Q. Well, that is right, is it? A. That is correct.

Q. That is what that draft contained that you saw? A. That is my recollection, sir.

Q. And that is all it contained? A. I don't recall of anything else.

Q. Now, going back to your first coming in, Mr. Stokley, 3950
isn't it a fact that you and the Judge, Judge Davis, and Kaufman had a first preliminary talk about the agreement and the terms,—— A. The only talk——

Q. —before you went into the library? A. The only talk that we had was, he recommended me that when I showed him, or what I put up, would be—he could rely on it. He says, "I have seen his groves."

Q. Well, didn't you three talk together about how you were to repay it, or when you were to repay it? A. No, that was in the—that was later in the agreement, after he looked over the papers.

Q. Well, don't you recall that when you three were in 3951
the Judge's chambers, before you went into the library, that Mr. Thorn Lord was called in then? A. No, he—I don't recall—we met him in the—the library, you call it, I met him in there, he was reading a law book, and my recollection is that Mr. Kaufman went in conversation with him in regards to getting the wording of the contract, or something in the contract.

Q. Now, Mr. Stokley, was anything said, either in the preliminary talk between you, Kaufman and Davis, in the Judge's chambers, or in the subsequent talk in the library, about any delinquent taxes on the property, or is that a thing that came up afterwards? A. That was put in the

contract—no, I guess not, I pledged him that the delinquent taxes of twenty-seven or eight hundred dollars should be paid out of the present crop of fruit, and I wasn't to have to pay twenty-five hundred that year, but the next year, but the interest at the end of the—I don't think it was semi-annual, I think it was once, I was to pay the interest.

Q. Well, you told him that you would pay delinquent taxes the next year? A. He says, "About when can you pay them?"

I says, "I will have them paid by February 1st"—which
3953 was February the 14th, that I got them paid.

Q. Now, are you quite sure that that subject of taxes came up at these two meetings, or at this meeting on October 24th? A. Yes, I told Kaufman that I owed these back taxes.

Q. Did you know at the time how much those back taxes were? A. I am quite sure that I did.

Q. How much were they? A. Twenty-seven hundred dollars, I believe, that is what—Cooley had looked it up and stated.

Q. Well, had Cooley given you that figure before you went up to Trenton? A. It is possible that he had, or I had looked it up at Tavares myself; knowing that I would have
3954 to tell them how much taxes was due, since they was delinquent.

Q. Well, now, I show you a wire, a night letter, dated October 24, from Cooley to Judge Davis, and I notice that the letter was sent from Mount Dora on the night of October 24th, by night letter, and this night letter says:

> "Amount to be paid Town directly Stokley property ten thousand net stop County taxes to be assumed by Stokley twenty seven hundred stop This is our agreement heretofore had with Stokley Stop Presume Stokley is there by now advise stop"

A. This gets me a little confused, I thought it was about the middle of October, and this is the 21st, isn't it?

Q. 24th. A. 24th?

Q. Well, I understood you to testify earlier that that was your best recollection as to the date, it was October 24th, that you were in Judge Davis's chambers. A. Possibly so.

Q. You notice that Cooley says, "Presume Stokley is there by now." A. Yes, yes.

Q. Now, you didn't see this wire, of course, when you were —— A. Before I left?

Q. —at Trenton on that occasion? A. No, I did not, 3956
never knew that——

Q. Because it didn't get to Judge Davis until the next morning, and you had gone by then, is that right? A. That is——

Q. You left that same night, on the 24th? A. Yes, yes, left the same day, got in there on the morning and left on the evening.

Q. Now, did you ask Cooley to wire Judge Davis about these taxes before you left for Trenton? A. I have no recollection of—of talking with him anything before leaving there. As I say, I didn't even get a statement, as to his valuation or any of the papers, that I recall.

Q. Well, this telegram, Mr. Stokley, has to do only with 3957
taxes, as you see? A. Yes, he says he talked it over with me, didn't he, or presume Stokley—— Q. He says—just read that wire.

(The witness examined the telegram.)

A. Oh, yes, county taxes to be assumed by Stokley—you see, I was trying to get the property for the ten thousand with all taxes paid. They had caused me to have these delinquent taxes by taking my fruit.

3958 *Charles Lee Stokley—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Yes, and so your understanding was, was it, that ten thousand dollars was to clean everything? A. Yes, but later I had to pay this, and after finding this out I pledged Kaufman that they will be taken care of by the first of February, and, as I say, I didn't get enough out of the fruit until the 14th to pay up these delinquent taxes.

Q. Well, I again ask you, isn't it possible that after your meeting of October 24th this question of the delinquent taxes came up?

3959 Mr. Harris: The first time?

By Mr. von Holst:

Q. For the first time. A. You mean after we had drafted the contract and he was going to lend me the money?

Q. Yes. A. That would have had to be after the 24th.

Q. Yes. A. I don't see how it could be, because Cooley had already notified Judge that these taxes would be against the property, and I knew it when I left there, because that's why I pledged Kaufman, in Judge's chambers, that I would take care of the taxes with the first fruit money.

Q. With the first fruit money? A. Yes, that is all the 3960 source I had to pay them.

Q. Well, did you know, though, what the amount of the taxes was? A. I can't say, but it seems I naturally would have.

Q. Well, now, then, Mr. Stokley, I want to show you a copy, a photostat of a carbon copy of a letter that Judge Davis wrote to you on October 25, 1933:

> "Inclosed you will find copy of a telegram which I received this morning from Mr. Cooley and a copy of my reply to him. I do not think that Mr. Kaufman would want to put $2700 more into the property. You can let me hear from you at your early

convenience, so that the matter may be settled one way or the other."

And then he goes on, Mr. Stokley:

"Frankly it seems to me that this $2700 is an afterthought and is not a fact. I am sure that the town never told you that you would have to be responsible for the taxes in addition to the $10,000 and I do not think that it was so understood; otherwise I cannot understand the third page of Mr. Cooley's letter to me of July 23rd. The two preceding pages are simply descriptions of your property. Read 3962
this carefully in the copy of my letter to Mr. Cooley which I am sending you, see what you can do and then let me hear from you."

Now, I wish to call your attention to some further correspondence here—just a minute—Judge Davis says in this letter of October 25th that he is sending you a copy of his letter to Cooley, does he not? A. Yes.

Q. And I show you the letter of October 25, 1935, which Davis sent to Cooley on that date:

"My dear Mr. Cooley:

"I dictated a letter to you last night when Mr. 3963
Stokley was here, which was written this morning before your telegram was delivered, but I am sending it to you together with this letter."

Now, he goes on:

"Your telegram tells me . . ." —referring to this telegram of Cooley to Davis of October 24th. A. Yes.

Q. ". . . that there is, in addition to the $10,000 to be raised by Mr. Stokley, $2700 to be raised to make the title clear. This was a surprise to me, as I am sure it was a surprise to him; for he did not so understand it . . ."

3964 *Charles Lee Stokley—For Amici Curiae—Direct*

Now, pausing there for a moment, Judge Davis says to Mr. Cooley on that occasion that you did not understand that there was twenty-seven hundred dollars delinquent taxes to be accounted for in addition to the ten thousand dollars for the town paving liens. A. Now, let me tell you, gentlemen, Judge was wrong. I fully understood it, and he didn't understand it. I understood there was twenty-seven hundred dollars delinquent taxes and so stated to Kaufman, that I would take care of them at that time. These telegrams—this correspondence was foreign to me, because I knew it. I didn't know there was correspondence like this until afterwards.

3965

Q. Well, now, wait a minute, you got this letter, the copy of this letter from—— A. After I had got back from Trenton.

Q. Yes, as soon as you got home? A. Yes.

Q. And then you wrote the Judge about it? A. Yes.

Q. Did you tell him, "Why, Judge, you are all wrong. My understanding is that I was to pay these taxes, from the beginning."? A. I can't say what I told him, but I am confident that we would have never been able to put it in the agreement that there was twenty-seven hundred dollars taxes due at that date——

Q. Well, on that point—— A. That is writing I can read you. That is my dear wife's writing.

3966

Q. Well, on that point, isn't it true that the first draft of this agreement is not the agreement that you signed finally, that there was another draft prepared, and isn't it in the second draft of the agreement? A. You have refreshed my memory. It seems that that is exactly clear to me, now, that Lord brought the agreements down for me to sign, when he came to Florida, and—but the outline of the agreement was practically the same that we got up in Judge's chambers.

Q. Well, now, again, there, Mr. Stokley, it was the same except that the final draft had the twenty-seven hundred dollars taxes?

Mr. Harris: No, I beg your pardon, there is nothing in the final draft about that,——

Mr. Neuman: Yes, there is.

Mr. Harris: —that says twenty-seven hundred.

Mr. von Holst: There certainly is, Mr. Harris, if you will just refer to it.

Mr. Harris: My recollection is at fault, then. I thought it said "subject to taxes".

Mr. von Holst: Twenty-seven hundred dollars, which he promised to pay by February 20th.

By Mr. von Holst: 3968

Q. Isn't it a fact——

Mr. Harris: Will you wait just a second? Let me refresh my own recollection.

I beg your pardon, it is in there.

The Master: Just a moment.

By Mr. von Holst:

Q. Isn't it a fact, Mr. Stokley, that it was in the final draft of the agreement that you put in this provision for twenty-seven hundred dollars taxes to be paid by February 3969
20th and that in that final draft you also agreed to throw in the five tenant houses, which had never been brought up before? Now, isn't that a fact? A. The cement building and the Pet Grove didn't cover the security that I gave him, besides the paving, town?

Q. Isn't this the fact, that on October 24th he asked for additional security, as you have testified, and you told him you would give him the Pet Grove and the cement block, the cement building? A. Yes.

Q. And then this question of delinquent taxes came up, twenty-seven hundred dollars, and that then, after the meet-

3970 *Charles Lee Stokley—For Amici Curiae—Direct*

ing of October 24th, you agreed to throw in the five tenant houses—— A. You have refreshed my memory.

Q. —to secure the taxes. A. That is correct. I had completely forgotten that part, but that is bound to be correct.

Q. And it is also correct, isn't it, Mr. Stokley, that in this first agreement, this first draft, there wasn't any mention of taxes or of the five tenement houses? A. I thought there was, I was under that impression. I could be mistaken.

Q. You could be mistaken. In other words, it is possible, isn't it, that that business about the delinquent taxes and the five tenement houses came up afterwards and was in-

3971 corporated in the final draft which you signed? A. In regards to the delinquent taxes, I couldn't say that, because I fully understood that I would—that he couldn't get the sheet cleared up for me on the taxes of the Town of Mount Dora, and I didn't withhold any indebtedness against it to Kaufman, I fully believe that we both were aware of the taxes due. I don't know what weight that will have either way, I don't know whether I should have said it, but that is my full belief.

Q. But as to the five tenement houses——

Mr. Harris: No,——

3972 *By Mr. von Holst:*

Q. The five—— A. The five tenement houses.

Q. The five tenement houses, you are sure that that was not discussed at the first meeting? A. Don't believe so.

Q. And that that is something that came up afterwards? A. Gentlemen, if the record says so, it did, but as far as my poor memory, I can't—I couldn't swear to it. I am trying to tell it as best I can remember.

Q. All right, that is all we want you to do.

(Discussion off the record.)

By Mr. von Holst:

Q. Now, Mr. Stokley, I show you a wire of November 6th, 1935, sent from you, it is a night letter, sent from you to Judge Davis, and it says:

"Will secure taxes with five houses half block north"

—now, you didn't punctuate this telegram and I am going to read it to you the way I think it should have been punctuated.

A. Right, sir, read it. 3974

Q. "Will secure taxes with five houses half block north. five thousand—— A. Worth five thousand, shouldn't it be?

Mr. Harris: Should have been "worth".

By Mr. von Holst:

Q. That is right, I was just going to ask you that. In other words, that word "north" should be "worth"—— A. Worth.

Q. —is that right? "thousand", period. "Taxes to be paid by February twentieth." A. Oh, I said the fifteenth. I stand corrected again. 3975

Q. Pretty close; period. "Will have four thousand insurance ready on home", period. A. Yes.

Q. "Fruit nearly ready for market will send the boxes soon", period. "Borrowed six hundred from bank cleared grove for you" period. A. That was the——

Q. Pet Grove. A. —Pet Grove; yes.

Q. There was a little lien on it? A. Yes.

Q. And you borrowed some and paid the rest, isn't that right? A. Yes, that is correct.

Q. "Will have papers ready". Now, that is, notice the date, November 6th. Now, does that telegram——

Mr. Harris: Where do we get November 6th?

Mr. von Holst: Look at it.

Mr. Thiess: The telegram.

Mr. Harris: Oh, yes, yes, all right.

By Mr. von Holst:

Q. Does that refresh your memory—— A. Yes.

Q. —that these—— A. Yes, it does.

Q. —five houses—— A. Worth——

Q. —worth five thousand dollars—— A. Yes.

3977 Q. —that you agreed then, on that date—— A. To put in this extra.

Q. —to put in this extra, and that that extra was to secure these taxes? A. Well, now, then, since I paid those taxes so near that date they should have given me back that much security—already had plenty.

Q. Well, yes, but, Mr. Stokley, I am just wanting to—— A. Thank you, sir.

Q. —refresh your recollection and get at the facts. A. That is clear.

Q. Now, in the light of that wire, doesn't it appear as though that was an additional thing that you threw in about the date of that wire, November 6th, 1935? A. On account

3978 of the added taxes that they knew nothing of.

Q. And that you were throwing in the five cement blocks —tenant buildings; the five tenant buildings—— A. Yes, I had already secured them with the cement building.

Q. You had already taken care of that, but, now, you were putting up these five tenant—or is it tenement? A. Yes, tenement houses.

Q. —tenement houses, and that is on a piece of your land that is clear north of your grove property, isn't it? A. That is what we call the East Town settlement, that is our darky settlement in the Town of Mount Dora.

Q. Yes. A. East of the City.

Q. Yes, and where with relation to your home? Isn't it north of that? A. Oh, yes, it is right on out Grandview, extended, where we have our darky quarters, have some thirty odd houses out there, and we keep the settlement for the darkies all to themselves.

Q. Yes, and you were going to convey—— A. Six of those houses that was in a certain block by themselves.

Q. Five, isn't it? A. Five, was it?

Q. Yes, in order to secure these delinquent taxes, isn't that right? A. That looks that way to me.

By the Master: 3980

Q. Did that refer to the same twenty-seven hundred dollars of taxes? A. I believe so, Judge, it seems that would have to have been extra security for the delinquent taxes.

By Mr. von Holst:

Q. Now, in view of that wire, Mr. Stokley, is it or is not a fact—I am not sure that the record is clear—what is the fact as to whether these twenty-seven hundred dollars' worth of taxes, delinquent county and State taxes, was discussed at the October 24th meeting? A. Well, I would have honestly sworn that I knew about it, and is it possible—off the 3981
record—that they didn't know about it, or that Judge didn't know about it, and I did? It is clear in my mind, gentlemen, that I knew when I came up there that I had these back taxes to pay.

Q. But my question is—— A. But putting in these extra houses mixes me up, that possibly I didn't know, but I certainly did.

Q. Well, Mr. Stokley, I am only asking you, not whether you knew or not, but was it discussed, the twenty-seven hundred dollars of taxes, discussed on October 24th? A. With Mr. Kaufman and myself?

Q. Yes. A. I fully believed I told him that I owed twenty-seven hundred dollars delinquent taxes and it should be taken care of out of the first fruit.

Mr. Harris: Now, Mr. White, I think the witness has been badgered enough about this. Each time he says that is his recollection.

Mr. von Holst: I object to the characterization of the examination as badgering, if the Master please.

The Master: No, I think not. He has had his memory refreshed, he says, several times.

3983 Mr. Harris: He still hasn't changed his answers.

The Master: Well, in some respects he has, I think.

Mr. Harris: Not with respect to mentioning to Kaufman at the time.

The Master: I think the examination is all right.

By Mr. von Holst:

Q. Now, Mr. Stokley, I want you to refer to the letter of October 31, 1935, which you say, I think, was written by your wife. A. Yes, I signed it; though, I guess.

Q. Is that your signature?

(The witness examined the letter.)

3984 A. No, I think Mama put that down.

By Mr. von Holst:

Q. Now, when she wrote letters for you, you, of course, read them—— A. Oh, yes.

Q. —or dictated them, I suppose. A. Dictated them, as best we could, we got together, and after my boys all grew up and left, why, I had no one else to use a typewriter, so——

Q. Now, I would like you to read that letter through to yourself, if you don't mind. A. I can read that, all right.

Q. Take your time.

(The witness examined the letter.)

By Mr. von Holst:

Q. Are you finished, Mr. Stokley? A. Yes, sir.

Mr. Harris: I think he ought to, while he is reading that, have him read that next memorandum about the taxes, with his note on the bottom of it. Did you see that, too, Mr. White?

3986

By Mr. von Holst:

Q. You have read this whole thing, haven't you? Didn't you read this? This is part of your same letter.

Mr. von Holst: Maybe we confused him, looking at those photostats. Could he just look at the original a moment?

The Witness: All right, isn't this the original?

Mr. von Holst: No, this is a photostat. You see, this is something that your enclosed, this typewritten matter, and then those are extra sheets, and then you wrote on this——

3987

The Witness: Yes.

Mr. von Holst: ——second sheet of typewritten matter, you finished your letter. Is that clear?

The Witness: This was typewritten after they got the letter up here?

Mr. Harris: No, you refer to it in your letter. In your letter you say you went to the tax office and got this.

By Mr. von Holst:

Q. Mr. Stokley, let me just show you the original a minute. Here is your letter, see? A. Yes, sir. By Jove, I

thought that was the original, I thought, just like Mama wrote it.

Q. No, that is just a photostat. Now, you see, the last page of your letter has it typed up above, "In Re: State and County taxes, Stokley property." Is that right? A. Yes, sir.

Q. Now, that is something you got from Cooley? A. All Town taxes included in the ten thousand—well, the town taxes.

Q. Yes. A. And I thought it was State and County taxes, and it was only the borough taxes.

3989 Mr. Harris: No, read that letter, down below,——

Mr. von Holst: Now, just a minute.

By Mr. von Holst:

Q. We want you to get straight on how this thing sets up in your letter, and, you see, here is a little slip in which you put certain data, and then there is this, and, now, here is the rest of your letter. You can read it right in the original.

(The witness examined the letter.)

By Mr. von Holst:

3990 Q. Have you finished? A. Yes, sir.

Q. Now, when you say, "I read your letter carefully, then went to Tavares, to the Tax office,"—— A. That is the county seat, five miles from my town.

Q. And the letter that you read was the letter of Davis to you of October 25, 1935, enclosing a copy of Judge Davis' letter to Cooley, is that right?

Mr. Neuman: And also the telegram.

By Mr. von Holst:

Q. And also the telegram, the Cooley telegram? A. Yes.

Q. Now, does that refresh your recollection—— A. Yes, may I explain here, if I hadn't of pledged to pay the taxes during February, had I waited until March the 30th I could have, under what we call the Murphy Act, in our State, I could have got a homestead exemption and could have paid the taxes for one dollar, and about fifty dollars for record work. The Government destroyed our fruit with the Med. Fly dope they sprayed on it, spent ten million dollars down there and they just ruined we farmers for the time being, we couldn't get our trees to bear, burned the limbs up, and they were lenient enough with us in the State Legislature to pass a law that we could bid in these taxes, but that was 3992
water gone over the falls, I was hard broke, when the rest of the neighbors got off with paying one dollar and record fees, fifty or seventy-five dollars, but I went and paid me a hundred cents on the dollar, to carry out my contract.

Q. Now, Mr. Stokley, in this letter you say, "I got a statement; which I'm inclosing, which is an easy plan, if I were going by that." And "by that," I suppose, refers to the plan of paying them in March? A. Yes.

Q. Or does it refer to the plan that is proposed here? A. You have refreshed my memory. I found that I could pay them with school bonds, gentlemen. In the investigation, the Court of New York, they asked me for about five 3993
days about a cashier's check for thirty-five hundred, that I bought Lake County School bonds and got the cash from the bank, that I had put my money in, to pay for the bonds, part in cash, and I must have been referring there, that there would be an easy plan to buy these for sixty-nine cents on the dollar and pay a hundred cents in delinquent taxes.

Q. Well, now, Mr. Stokley, what you referred to in your letter is that you were enclosing a plan, enclosing a statement, "I got a statement, which I'm inclosing, which is an easy plan, if I were going by that." Now, isn't that this typewritten matter on the last page of your letter, entitled:

"In Re: State and County taxes, Stokley property." A. That is the Town of Mount Dora.

Q. It is talking about the delinquent State and county taxes now against the property, isn't it? A. Would be subject to purchase by any one——

Q. "Will not be subject to purchase—— A. Oh, I see.

Q. "—by anyone before 1938 as 20% of said delinquent taxes have already been paid by the Town of Mount Dora, —— A. Yes.

Q. "—provided, however, that the current taxes are taken care of." You see the difference? A. Yes.

3995 Q. That is the current taxes. A. Yes.

Q. Now, then, that is the plan that you are referring to in the letter, isn't it? A. Yes.

Q. "I got a statement, which I'm inclosing, which is an easy plan, if I were going by that." A. Yes.

Q. Is that right? And if you were going by that plan you wouldn't have any delinquent taxes to pay before 1938, isn't that right,—— A. Yes, that is right.

Q. —according to what it says? A. And still, I went ahead and paid the taxes as agreed, to clean them up, and didn't take advantage of this waiting.

Q. But you were still discussing a way of paying these 3996 taxes as late as October 31st, the date of your letter, were you not? A. Was this worded by my tax assessor over at Tavares? I believe it was.

Q. I don't know, Mr. Stokley. All I know is what your letter says. A. Yes, but this part——

Q. "I got a statement which I'm inclosing . . ." A. That is the statement, then.

Q. I should judge that you got that whole sheet, didn't you, from the tax office,—— A. Well, that would be the——

Q. And then you wrote the balance of your letter on the bottom of the sheet, isn't that right? A. Must be.

Q. In other words, this typewritten matter on the last

page of your letter is the statement which the tax office gave you. A. Yes.

Q. And then you enclosed that and then you wrote the balance of your letter on the bottom of the sheet? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Now, I want to refer to something else in this letter, on the second page:

> "I'm glad to report, I have settled the small claim, against the pet grove, of eleven hundred dollars,"—now, this letter is October 31st—"now I can give you first mortgage, on both pieces, of the extra property, 3998
> or will deed it to you, if you think best."

A. Well,——

Q. Now just a minute,—— A. —hadn't I already been up here and got the contract at that time?

Q. Mr. Stokley, let's get the dates in mind. You were up here, up at Trenton, rather, on October 24th. A. Yes.

Q. And there had at least been a preliminary draft of contract. Now, then, you say, on October 31st, the date of this letter, "Now I can give you first mortgage, on both pieces . . ." Now, your letter only mentions the pet grove, but by both pieces did you not mean the pet grove and the cement house? A. And the cement building. 3999

Q. Yes. There is no mention in this letter of October 31st of the five tenement houses, is there? A. No, sir, I don't see any.

Q. And you say in this letter of October 31st, ". . . of the extra property, or will deed it to you, if you think best."—so on October 31st you were offering Judge, or writing Judge Davis that you will either deed it to him or mortgage it to him, is that right? A. Yes, that is what I had in mind there, that is, we have some——

Q. Or did you mean by "you," did you mean Kaufman? You say "you." A. Well, to satisfy the ten thousand dollar

loan, was what I meant, of course. We can in our country deed a fellow a piece of property to keep him from the expense of foreclosing, and take a contract for the title, like my contracts there, and as soon as you have redeemed it, he deeds it back to you and gives up your contract.

Q. Yes. Now, coming back to this letter, Mr. Stokley, can you explain that first paragraph on the second page of your letter: "I'm glad to report, I have settled the small claim, against the pet grove, of eleven hundred dollars, now I can give you first mortgage, on both pieces, of the extra property, or will deed it to you, if you think best."? A.
4001 Well, I didn't mean to put "deed it to you," but can deed it as security.

Q. Well, you say either a mortgage, first mortgage on both pieces, or will deed it. A. That is right.

Q. That is right? A. Yes.

Q. So on October 31st you had not then determined whether you were going to deed it or to mortgage it? A. This is before Lord got down there, isn't it?

Mr. Harris: That is right.

By Mr. von Holst:

4002 Q. Yes, sir. A. That was in November.

Q. November, and were you going to—what is your answer to the last question? A. Was I going to deed it to him or mortgage it to him?

Q. Yes, I mean, you were still discussing that question, weren't you? A. Yes.

Q. And who were you going to deed it to, or mortgage it? A. The one that loaned me the ten thousand.

Q. Kaufman? A. Sure.

Q. Not to Davis? A. No.

Q. All right, now, then, that would be indicated, wouldn't it, by the next paragraph:

4003

"I understand the situation thoroly, and do want to secure Mr. Kaufman,——

A. Yes.

Q. "—so he won't criticise you." A. Yes, for getting the loan for me.

Q. And you are talking about securing Mr. Kaufman with the Pet Grove—— A. And cement building.

Q. —and the cement building. And then on November 6th, 1931— 35, pardon me, on November 6th, 1935, you night lettered Judge Davis that you would secure the taxes with five houses half block north, and that is the first time 4004
you brought up the question of the five houses, is that right? A. Of the delinquent taxes.

Q. And the five houses? A. Yes.

Q. Now, I want to ask for your best recollection as to when you cleared that lien on the Pet Grove. First of all, before you answer, if you will, look at this letter here again, on the second page, "I'm glad to report, I have settled the small claim, against the pet grove, . . ." A. I had bought a carload of fertilizer and had put up the Pet Grove as security for the nine hundred dollars, and in addition to that I got enough nitrate of soda so it come to about two hundred and eight dollars, and the fellow was kind enough 4005
to just take a verbal agreement that I would forfeit the Pet Grove if it wasn't paid, or in the event of a freeze that froze my other oranges, so I paid that off.

Q. Now, Mr. Stokley, you paid it off after October 24th, when you came to Trenton, did you not, and between that time and the date of your letter of October 31st? A. It looks that way.

Q. Because you say to Judge Davis, on October 31st:

"I'm glad to report, I have settled the small claim, against the pet grove, of eleven hundred dollars; . . ."

A. Yes, sir.

Q. Now, is that right? A. That is right.

Q. So you paid that after you left Trenton and before the deal was finally closed? A. Yes.

Q. And you paid it before this letter of October 31st, is that right? A. It looks that way.

Q. Mr. Stokley, I want to show you Amici Exhibit 75, which is a photostat of the agreement that you finally signed with Mr. Kaufman, the date which it bears being the 25th of November, 1935, which would be a day over a month after your visit to Trenton. You remember Mr. Lord came
4007 down. A. Yes, I ought to, because I paid his expenses.

Q. And you saw him, you went with him to the Town meeting, did you? A. Yes, I went with him to Tavares, and when he presented the ten thousand dollar check each of the councilmen had to see it and smell of it and look at it, and see if it was all right.

Q. I just want to bring to your attention that this agreement was signed a day more than a month after you went up to Trenton. A. Yes.

Q. Now, then, if you will refer to this paragraph, beginning here:

4008 "Whereas the party of the second part desires and agrees to pay to the party of the first part the said sum of $10,000, and in order to secure said payment to execute a deed for certain other property belonging to him which is free and clear of all encumbrance, to wit: a certain tract of land known as 'My Pet Grove', consisting of about four acres; a certain other tract on which there is a building known as 'Stokley's Cement Building in East Town'; and another tract or tracts on which there are five houses. (All of said properties to be fully and accurately described in the deed of conveyance)."

Now, isn't it a fact that at the time you were in Judge Davis's chambers on October 24 "my Pet Grove" was not free and clear of encumbrances? A. Absolutely.

Q. And does that refresh your recollection that this agreement which you finally signed is not the agreement which was in draft on October 24th, in other words, it is a redraft—— A. Well,——

Q. —of that agreement? A. —I stated there that the property that I put in to Mr. Kaufman was free of encumbrance, and there was this security on the Pet Grove, instead of the Orange County grove, ——

Q. Yes. A. —which was the same size, but I either was misleading, to think that was free and clear, or it was after that that this was cleared up. 4010

Q. Yes, therefore, it is quite evident, isn't it, that when you signed this contract you had cleared the Pet Grove? A. My letter of that date shows——.

Q. Yes. A. —that I had paid it off.

Q. On October 31st, shows that you have cleared it, but you had not cleared it on October 24th, had you?

Mr. Harris: I don't understand—well, go ahead.

A. Well, that—that was cleared then because I showed Lord——

Q. Now, you say "then"; when do you mean? A. That was cleared when the contract was written, because Lord looked—— 4011

By Mr. Harris:

Q. On the 24th, in the Judge's chambers, in the Judge's chambers, in the library? A. When Lord came down and looked the records over, it was all clear.

By Mr. von Holst:

Q. Yes, that was in November, is that right, Mr. Stokley? Mr. Lord came down in November? A. Yes.

4012 *Charles Lee Stokley—For Amici Curiae—Direct*

Q. And by that time you had cleared "my Pet Grove", is that right, and your letter of October 31st, tells Judge Davis, "I am glad to report to you that I have cleared the Pet Grove", is that right? A. Yes, I was under the impression when I was pledging this property that it was the Orange County grove, that the fertilizer man had the eleven hundred dollars for the soda and the complete fertilizer, but it was on the Pet Grove.

By Mr. Harris:

4013 Q. You mean when you were in Trenton—— A. Yes.

Q. —you were under that impression? A. Yes, sir, I didn't mean to tell a lie, that it wasn't free. I would have sworn it was free.

By Mr. von Holst:

Q. Mr. Stokley, I am not suggesting in the slightest that you told a lie, —— A. No, now.

Q. —don't misunderstand me, I am merely asking you whether it is not possible that this agreement which you signed in November, which says that the Pet Grove is free was drafted after you cleaned up the Pet Grove, and is a
4014 second draft of the agreement. A. Well, it is——

Mr. Harris: If he knows.

Mr. von Holst: If you know.

A. (Continued) I don't know, I don't believe I heard—that bothers me, because I had an idea that I pledged there that it was free and clear.

By Mr. von Holst:

Q. No, the point is that it may well be, may it not, that when you were there, in October 24th, the draft that you

saw did not say that, about the Pet Grove being free and clear of encumbrances, and that then you cleared up the encumbrances and then the final draft of the agreement referred to the Pet Grove as being free and clear of all encumbrances, isn't that right?

Mr. Harris: Well, you say it might be so. I object to that. That is purely argumentative.

Mr. von Holst: I know it is argumentative——

The Master: I think you ought not to interfere, Mr. Harris. This is really cross-examination.

Mr. Harris: Well, I object to this as being argumentative, and Mr. von Holst agrees it is. 4016

Mr. von Holst: It is argumentative to the extent necessary to get the witness's best recollection on the point.

Mr. Harris: To ask a witness whether it might well be, instead of whether he recalls it or not, I don't regard as proper cross.

The Master: He is asking if in his recollection it might not be the case, as I understand his question.

Mr. von Holst: That is what I intended to ask. Maybe my question was badly framed.

By Mr. von Holst: 4017

Q. Mr. Stokley, isn't it your recollection now, after looking at this thing all over, that what you finally signed was not the rough draft of the agreement which you saw on October 24th, but was a redraft?

Mr. Harris: Now, just a minute, I object to that, Your Honor, and I—— A. I——

Mr. Harris: Just a minute. I don't recall that that was the witness's testimony, that he saw the rough draft.

Mr. von Holst: He so said.

4018 *Charles Lee Stokley—For Amici Curiae—Direct*

Mr. Thiess: He so said.

The Master: He said he saw something that he thought had been written——

Mr. Harris: It is not my recollection—go back——

The Master: What did he say?

Mr. von Holst: Mr. Stokley——

The Master: I was going to inquire from the stenographer what he said.

Mr. Harris: You can ask him again, if you want to. It will be quite a ways back, Mr. White.

4019 Mr. Von Holst: Well, without prejudice to what his prior testimony is, I will ask the question again.

The Master: Very well.

By Mr. von Holst:

Q. Mr. Stokley, let me ask you once more, did you see the rough draft on October 24th, the first draft, the thing that was written up that day? A. This is worded just as——

Q. Just a moment, can you answer that question, first? I think you said that you read it. A. Yes.

Q. Is my recollection of your testimony right, you read
4020 it? A. Yes.

Q. All right. Now, then, my question is, isn't it a fact that the thing that you read on the 24th of October was rewritten after you cleared up the Pet Grove and removed the encumbrance on it, and that this agreement that you signed on the 25th day of November is a redraft of the draft that you saw on October 24th? A. Well, now, off the record, this is just as the agreement was that we first drafted, he simply brought duplicate copies, so as to leave me a contract, and I don't see that there is any difference, the only thing that I can see is, just as I have tried to tell you, that it was misleading, that there was a lien against the Pet Grove, ver-

bally, with my friend, for the fertilizer, and I said it was free and clear, and told them there that it was.

Q. Well, how about the five houses? Now, this agreement that you are looking at now, Amici Exhibit 75, refers to the five tenement houses, and haven't you testified this morning that those five tenement houses were not discussed on October 24th? A. They wasn't put it, they wasn't in the—in Trenton, that is what we are speaking of, isn't it?

Q. Yes, they weren't discussed at Trenton, were they? A. No, that is part that I added in, and that bothers me, you splendid business men knows that was a poor way to do business, but I was confident and would take oath that I 4022
knew about these delinquent taxes and didn't mislead Morgan Kaufman, but on the twenty-seven hundred dollars due against the property, I didn't talk it over with Judge, he didn't know anything about it, only this correspondence back and forth would prove it, it seems to me.

Q. Yes, now, my specific question is just this. You have testified this morning, as I have understood you, and it is true, is it not, that the five tenement houses were not discussed on the October 24th meeting? A. I would swear to that.

Q. That that is true, that you didn't discuss them? A. That is the best of my belief, I don't—I don't recall—because 4023
later on my letters show I added that in.

Q. Now, then, did you take a copy of the draft which you read in Judge Davis's chambers or in the library on October 24th? A. I can't say, but it seems that I did.

Q. Well, have you ever been able to find it? A. Well, as I stated, I turned everything over, letters of importance and of no importance, everything, over to the Government,

Q. Well, you haven't brought it this morning, so it isn't in your possession—— A. No, sir.

Q. —now? A. I brought everything to you gentlemen that I could scratch up, which was fertilizer bills and taxes.

Q. I refer you to a letter that Judge Davis sent to you—this is a photostat of a carbon copy of a letter that Judge Davis brought in—this letter being dated November 21, 1935, Amici 109.

Mr. Harris: May we have 109? What is the date of that?

Mr. von Holst: November 21, 1935.

By Mr. von Holst:

4025 Q. In this letter, Mr. Stokley, Judge Davis says to you—middle of the second paragraph—"You stated that you were going to have those prepared by some other lawyer." Now, when did you state that to Judge Davis? A. They were going to put the expense on me by sending a lawyer from the North down, and I thought I could just as well get a Florida lawyer that would be thorough and fix it without having the expense of an attorney to come from the North.

Q. And that referred to the deeds conveying the Pet Grove, Stokley's Cement Building, and the five houses, is that right?

Mr. Harris: No, just a minute, Your Honor, look at it. I don't think it does. I don't see how he can

4026 lead the witness that way, and I object.

Mr. von Holst: I will read the two sentences together, then.

Mr. Harris: Well, read the whole paragraph, it refers to everything; quit-claim——

Mr. von Holst: Well, I will read the whole paragraph.

Mr. Harris: All right.

By Mr. von Holst:

Q. "Will you see that he Mr. Cooley has the quit claim deed from you and Cousin Delta to Mr. Kauf-

man for the property which the Town is conveying to Mr. Kaufman, ready so that it can be executed by you when Mr. Lord is there. Will you also have the deed conveying the Pet Grove, Stokley's Cement Building and the five houses to Mr. Kaufman ready? You stated that you were going to have those prepared so that they can be executed on Monday morning and Mr. Lord will not be held up and can return here as soon as possible, because we are working under pressure at this time and he is needed back home. If you will be good enough to have those papers prepared and expedite his return I shall thank you very much." 4028

Now, where Judge Davis says, "you were going to have those prepared by some other lawyer", I assume he is referring to all the documents that he talks about in that paragraph, is that right? A. The papers that were to be in the contract.

Q. All right. Now, what I want to know is, when did you tell that to Judge Davis? He says that you stated—meaning you,—— A. Yes.

Q. —Mr. Stokley—were going to have those prepared by some other lawyer. Did you have a conference with Judge Davis about whether you should use a Florida lawyer or whether they should send one down from the North? A. There was something said, and as to when it was said, I don't know, but I knew that there would be an expense to Lord coming down, and I don't know but what there is a letter bearing that out. I haven't got it, nor I don't see it here, that I suggested that we had Florida lawyers that would draft the papers much cheaper than the expense of having him to come down, and he then tells me there to go and get them ready, it would save Lord time, but still I would have the expense of Lord coming down. 4029

Q. Mr. Stokley, didn't you go back to Trenton and see Judge Davis after October 24, 1935 and before Lord came

down to Florida? A. No, sir, no, I do but little traveling, gentlemen, and I can well remember the trips. That isn't hard to do.

The Master: Well, I don't think the witness has answered the question.

By the Master:

Q. The question was, when and where did you tell Judge Davis that you preferred to have a Florida lawyer do this work? A. I can't say, Judge, when I suggested that, but
4034 it is well, clear in my memory that I suggested to him or Mr. Kaufman, one, that I could have it drawn up, and it seems that they said, "We don't do business that way in the north, Charlie."

Q. Well, I understood you to say that you did not discuss the matter at all with Judge Davis—— A. Well, in regards to the transaction.

Q. —when Mr. Kaufman came in,—— A. I did not.

Q. —and the question is, if you didn't discuss it then, when did you discuss it,—— A. It is possible I wrote him.

Q. —to the point, at least, of telling him, to the point, at least, of telling him that you wanted a Florida lawyer
4032 to attend to it? When was that? A. That was after my trip to Trenton.

Q. By letter? A. It seems to me that I wrote him by letter that I could get the whole thing transacted with—Cooley had the Town's part to clear, and without expense of Lord coming down.

Mr. Harris: Your Honor, I think you overlook the fact that in making his answer he did say that previously, when Mr. von Holst asked him the question, he said he thought there might be some correspondence showing that, and I think there is some discussion about that.

The Master: I didn't remember any.

Mr. Harris: I think there is something.

The Witness: Have we got all the correspondence to the Judge or to Kaufman in regard to about that time?

Mr. von Holst: I will show you a sheaf of correspondence, photostats of correspondence, that Judge Davis brought in here, purporting to be all the correspondence he had with you——

Mr. Harris: No,——

Mr. Von Holst: —or with Cooley——

Mr. Harris: No,—— 4034

Mr. von Holst: —regarding this Stokley loan.

Mr. Harris: That is not true, Mr. von Holst, and I object to it.

The Master: What did Judge Davis say?

Mr. Harris: He said that was all that he had, could find in his files.

The Master: I think that is what he said, yes.

Mr. von Holst: What did I say?

Mr. Harris: You said all the correspondence he had with Cooley or Stokley.

Mr. von Holst: Well, I meant "had", by had it with him, I am sorry.

Mr. Harris: All right. 4035

By Mr. von Holst:

Q. Now, will you look in that correspondence and see if you can't find any letter wherein Judge Davis, or wherein you had said to Judge Davis that you were going to have these instruments prepared by some other lawyer? A. Well, I recall trying to get out of paying Lord's expenses, but I can't state as to what they—the correspondence or the—what the conversation was, nor when there was any conversation, but you can see by that that I was trying to get a

Florida lawyer to perform the work that Lord would have done by coming down.

Q. Yes, but what we are interested in knowing is when you had that conversation, if it was a conversation. A. I don't know.

Q. Judge Davis doesn't say that you wrote, does he? He says you stated—— A. Yes.

Q. —that you were going to have those prepared by some other lawyer. A. Well, that is why I think, I said in a letter that there was some—"Mr. Kaufman told me I would have to pay Lord's expenses", it seems to me like it was.

4037 Q. Now, didn't you, at the conference of October 24th, didn't you talk about paying Lord's expenses? Wasn't it then agreed that you were to pay Lord's expenses for going down? A. When we were drafting out the papers it seems that there was something said, that Mr. Lord would come down, or he asked him could he—could he draft the papers, or could he come down and tend to the business for him.

Q. Who asked him? A. Mr. Kaufman asked him.

Q. Asked Lord? A. In there, when we were to ourselves.

Q. Asked Lord? A. That is my recollection, gentlemen, I won't swear to that, but it seems that he asked Lord, "Could you tend to it for me?", or, "Could you get away?", or some

4038 thing to that effect.

Q. And then did he ask you whether you would pay Lord's expenses? A. That is why I believe that I wrote Judge, trying to get a Florida lawyer to fix all the matter up, to eliminate Lord's expenses.

Q. Now, Mr. Stokley, just —— A. I am not ——

Q. Just try to answer the question, before you make your explanation. Did Kaufman on October 24th ask you if you would pay Lord's expenses? A. I will state that I fully believe he did—that I would have to pay his expenses.

Q. Now, was it in this connection that you said that you could get a Florida lawyer to fix up these deeds? A. I don't

believe so, I don't think I objected to Mr. Kaufman's suggestion, but it strikes me that when I got back, I wrote a letter and stated that I could get a Florida lawyer. That is the best memory that I have on it, because I see there he had the same idea that I had, that I was trying to get out of paying the lawyer's expenses.

Q. Judge Davis doesn't refer there to any letter that he has received from you, does he? A. He says I stated.

Q. He says you stated. Now, here is a letter from you to Judge Davis, on October 31st, that you read very carefully, that is in your wife's handwriting. Do you want to read it again, or do you know that there is no reference to this matter in that letter? A. There is no reference to it in that letter, in regards to hiring a Florida lawyer. 4040

Q. Now, isn't it true that when you were talking about sending Judge Davis's law clerk to Florida on this matter that Judge Davis was present? A. No, he wasn't present—he was present when he introduced me to Kaufman, and he was present when I came out and bid him good bye.

Q. Not during any talks that you had with Kaufman and Lord about this matter? A. Not only—the only part, just as I afore stated, he says, "What he tells you, you can rely on. I have seen his groves, he has nice property"—something to that effect.

Q. Now, when Mr. Lord came down to Florida— 4041

Mr. Harris: Do you want to continue? It is a little after one.

The Master: Well, I would like to adjourn until two-thirty, so I am willing to sit as late as you gentlemen want to go on, as late as one-thirty, if you like, because I have an engagement at two o'clock I want to keep.

The Witness: Judge, might I please put up a plea? We haven't had any rain in seven weeks, and my oranges are getting soft, and we are trying our best

to keep a little irrigation agoing to wet them down, and I would thank the Court to please let me off as soon as you can.

The Master: Well, we will do the best we can, Mr. Stokley.

The Witness: Thank you, sir.

By Mr. von Holst:

Q. Now, when Mr. Lord came down to Florida you had already received in the mails the Kaufman agreement, had
4043 you not? A. I don't think anything was, any copy was sent through the mails. I think what I brought home with me and what Lord brought was the agreement. I entertained Lord at my home, met him at the train, got in on Sunday and went to work Monday and finished up the business, and left Monday night.

Q. But what did Lord bring with him, to the best of your recollection? A. All the papers that we have signed here, is my belief, I don't——

Q. Well, now, wait a minute, Mr. Stokley, the deeds, he didn't bring the deeds with him, did he? A. We had the deeds executed in Florida.

4044 Q. Who drew the deeds? A. Mr. Lord, and Cooley worked in connections in his office that day, and my wife and I signed them just at sunset, in a notary public's office, Mr. Tremain.

Q. Did you see Mr. Lord drawing the deeds? A. No, I had read them over good and careful, though, and my wife did also, before we signed them.

Q. You don't know whether Mr. Lord drew the deeds or not, do you? A. I will state that they were drawn in Cooley's office during the time that Lord was there.

Q. May they not have been prepared before that time? A. I don't believe so.

Q. Were you present when they were prepared? A. I was up in the office when they were working on them, and then was back with my men on the farm, and later in the day they drove by the farm, Cooley and Lord did, and wanted me to come down and bring my wife to have them notarized.

Q. Now, what else did Mr. Lord have with him? A. He had a check that he gave to the Town of Mount Dora, to relinquish my paving lien.

Q. Well, you met Mr. Lord at the train, didn't you? A. Yes, sir.

Q. Sanford? A. No, Mount Dora, he came in on the—we have a local train that runs ——

4046

Q. All right. A. —twenty miles.

Q. Mount Dora. Now, did he have an envelope with him? A. Oh, he had, had his—what do you call, one of those gentlemen's—a brief case.

Q. All right, he had a brief case. Now, then, did you at any time between then and the time that he delivered the check to the Town council of Mount Dora, did you see him produce from his papers the agreement with Kaufman that you signed? A. I can't swear to that because I wasn't—Lord and I talked matters over, that he wanted to have thorough, so there wouldn't be anything against him, any criticism, and I told him I would cooperate with him every way that I could, and my wife also.

4047

Q. Now, did you give to Mr. Lord a quit-claim deed signed by yourself and your wife to the same property which was conveyed by the Town of Mount Dora to Mr. Kaufman? A. I gave to Mr. Kaufman, or through Lord, a deed to all the property that the paving lien was against. I will explain to you, here is the ten-acre grove, these two and one-half acre lots here would be on the—on the street, on the front street, this two and one-half here, but this one over here wouldn't touch the paving lien, and I didn't mortgage that to Mr. Kaufman. He got the lots that were paved all around in my different properties.

Q. In other words, isn't this true, the Town of Mount Dora had delivered a deed to Mr. Lord when Mr. Lord gave them the check? A. Correct.

Q. And you and your wife gave —— A. Quit-claim ——

Q. Gave Mr. Lord a quit-claim deed on that same property —— A. Yes, sir.

Q. —that the Town had conveyed to Kaufman, is that right? A. Yes, you see, the block that wasn't——

Q. Now, Mr. Stokley, it is all right, I don't want to cut you off at all, but if you want to go soon, you see, the more briefly you can answer the questions,—— A. I beg your
4049 pardon.

Q. —the sooner we can get through. A. All right.

Q. I don't want to stop you from making any explanation that you think you should, but I merely make that suggestion, you see.

Now, you also delivered to Mr. Lord a deed, a warranty deed, conveying the five tenement houses, the Pet Grove and the cement building, did you not? A. That is correct, I believe.

Q. Now, then, do you know who prepared the deed to the five houses, the Pet Grove and the cement building? A. That brings up in my memory, it seems that Mr. L. R. Tre-
4050 main, my real estate man in town, who is notary public, I think he drafted this separate property that was sent—now, I won't be sure about that, but since it looks like it was at a later date, it seems that it is possible.

Q. And Mr. Tremain may have prepared the quit-claim, too,—— A. I don't think so.

Q. —from you and your wife. A. I think that was some of Cooley's work.

Q. You think Cooley did that, is that right?

The Master: Those deeds all ran to Kaufman, did they?

Mr. von Holst: Yes, sir.

The Witness: You mean the ones that the paving lien was on, to Kaufman?

By Mr. von Holst:

Q. Well, the one to the Pet Grove—— A. And the cement building.

Q. —and the cement building, and the—— A. Five tenements.

Q. —five tenements ran to Kaufman? A. Yes.

Q. The quit-claim from yourself and your wife on the 4052
same property that the Town conveyed ran to Kaufman? A. Yes.

Q. Now, according to your agreement with Mr. Kaufman, Amici Exhibit 55, these State and County taxes, amounting to—— A. Twenty-seven hundred dollars.

Q. —twenty-seven hundred dollars were to be paid by you on or before February 20, 1936, is that right? A. Yes, sir.

Q. What is your best recollection as to how that particular date of February 20, 1936 was fixed upon? A. Why we suggested that?

Q. Yes. A. We move our mid-season fruit in certain months, and I expected to be through with the pineapple oranges by the middle of February, and I had pledged to take 4053
the fruit money and go at once and pay the taxes, is why that was figured on, because of the seasons that our fruit gets ripe.

Q. And that was your own suggestion, then? A. Yes, it was.

Q. To suit your own convenience? A. Yes.

Q. On that matter of moving fruit? A. Yes, sir.

Q. I show you a photostat of a day letter which appears to be from J. Warren Davis to you, dated February 19, 1936, Amici Exhibit 110. Do you recall receiving that day letter?

(The witness examined the telegram.)

A. Yes, sir.

By Mr. von Holst:

Q. Have you read it? A. Yes, sir.

Mr. Harris: What is the date of that?

Mr. von Holst: February 19, 1936.

By Mr. von Holst:

4055 Q. And had Mr. Kaufman communicated with you at any time before the date of that telegram respecting these taxes? A. In regards to the twenty-seven hundred?

Q. Yes.

Mr. Harris: Has he read the telegram?

Mr. von Holst: Yes.

By Mr. Harris:

Q. Have you read it? A. That is an entirely different matter.

Q. Well, it is the last line that he has in mind, I think.

4056 A. Let's see.

By Mr. von Holst:

Q. Just read the telegram again. My question is——

Mr. Harris: Let him read it, first.

(The witness examined the telegram.)

The Witness: Well, I had pledged to pay them by the 20th, and he says, don't fail to pay them on time.

Mr. von Holst: That is right.

The Witness: I guess he thought that Florida people were pretty slow and he would punch me up.

By Mr. von Holst:

Q. Well, I want to know whether from the date of the agreement that you signed with Mr. Kaufman, that was on November 25, 1935, to the date of the receipt of this telegram from Judge Davis, on February 19, 1936, had you received any communication from Kaufman about those taxes? A. I can't say that I have, because I told Kaufman I would tend to them. 4058

Q. Well, your best recollection is that you did not receive any communication from Kaufman, is that right?

The Reporter: Was there any answer?

Mr. von Holst: Read the question.

(The question was repeated by the reporter as follows:

"Q. Well, your best recollection is that you did not receive any communication from Kaufman, is that right?")

By Mr. von Holst: 4059

Q. About these taxes. A. I can't say that I did.

Q. Well, I am not asking you to say that you did. A. Well, let me put it this way, I had pledged him I would pay them at this time, and within just a few days I carried out my agreement. I don't think that Mr. Kaufman——

Q. But, Mr. Stokley,——

Mr. Harris: Wait a minute, he says, "I don't think Mr. Kaufman——

Mr. von Holst: Go on.

A. (Continued) I don't think Mr. Kaufman questioned I would pay them at the time agreed. I don't think there was

any correspondence in regards to punching me up. Judge Davis does there because he knew I had these delinquent taxes.

By Mr. von Holst:

Q. Your best recollection, then, is that you did not get any letter from Mr. Kaufman about these taxes? A. I haven't any recollection of getting a letter——

Q. All right. A. —that I wouldn't pay them——

Q. And you did not pay these taxes on February 20th, did you? A. Mighty near.

4061

Q. When did you pay them? A. Just a few days later, I was just a little slow. I wouldn't have been that late, but I got a chance to buy school bonds and had to send them up to St. Petersburg, to Eustis.

Q. You paid them on March 9th, 1936, didn't you? A. Is that so?

Q. Well, is that your recollection? A. I can't swear to it, but just as quick as I could get the money.

By Mr. Harris:

Q. You did pay them? A. I did pay them.

4062 *By Mr. von Holst:*

Q. Now, in February, 1936, you were also indebted to the Eustis Packing Company and the Gerrard Company? A. S. A. Gerrard, or Gerrard——

Q. S. A. Gerrard, I think it is. A. S. A. Gerrard, of Cincinnati.

Q. Now, you were so indebted to them in February of 1936, were you not? A. Yes, sir.

Q. And was that on a fruit picking agreement that they held? A. That was on a fruit contract, and we had had a freak freeze that, gentlemen, it really froze overnight. As a general thing, our cold weather comes on two or three nights,

but it froze overnight and that ruined my crop of fruit, and I couldn't pay my contract with S. A. Gerrard Company, and I got behind with them, so I secured them with a piece of property known as the Orange County grove, which the Judge taken care of that four thousand for me.

Q. So in February, 1936, you didn't have enough money to pay the delinquent taxes and also take care of Gerrard and Eustis, did you? A. No, sir.

Q. And you had to borrow some money? A. Yes.

Q. Now, did you go to anyone else before you went to Judge Davis about it? A. I believe that Judge was down 4064
that year and I spoke to him in the spring of '36, I don't know what the dates are there, but, anyhow, I asked him if he had—could get anyone else to lend me some more money.

Q. Well, Judge Davis came to Mount Dora about this time, didn't he, in about February, 1936? A. I believe so, that is my recollection, sir.

Q. Now, did you ask Judge Davis to come up and see you about this matter, your difficulty, or did he come up voluntarily, or what? A. Just as the year before, he was in town and visited my groves, and so on, and I told him of owing this S. A. Gerrard Company, and Mr. Conklin, their manager, would give me the interest off if I could just get up the four thousand. 4065

The Master: Mr. von Holst, you are starting in a new phase of the matter?

Mr von Holst: Yes.

The Master: Suppose we adjourn until 2:30 at this time.

(Recess, 1:20 until 2:30 o'clock P. M.)

4066 *Charles Lee Stokley—For Amici Curiae—Direct*

AFTER RECESS

Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued)

CHARLES L. STOKLEY, recalled.

Direct Examination by Mr. von Holst (Continued):

4067 Q. Now, it is also a fact, Mr. Stokley, that in February of 1936 you knew that you had to meet principal and interest payments on Mr. Kaufman's contract on April 1st, 1936, is that right? A. I am quite sure that is the date in the contract.

Q. Interest of eight per cent., and a principal payment of twenty-five hundred? A. Yes, sir.

Q. And you did not have any money to do that with, did you? A. No, sir.

The Master: April 1st of what year was that?

Mr. von Holst: 1936.

By Mr. von Holst:

4068 Q. A first payment on principal? A. Yes, sir.

The Master: Twenty-five hundred?

Mr. von Holst: Twenty-five hundred, and four hundred dollars interest.

By Mr. von Holst:

Q. That is right, isn't it? A. That is right, twenty-five hundred.

Q. Twenty-five hundred dollars principal, and four hundred dollars interest? A. Interest.

Q. Making twenty-nine hundred in all, is that right? A. That is right.

Q. Now, going back to this visit that you had with Judge Davis in, oh, about February 19th, I refer you to Judge Davis's day letter to you, dated February 19th, which says:

"Had telegram from Mr. Conklin Stop Will be up Saturday in time for supper and will stay over till Monday Stop Would like to see him Saturday if convenient to him stop Don't forget to pay your taxes today or time."

Now, Judge Davis did come up—— A. Yes, sir.

Q. —a few days after that telegram? A. Yes, and met 4070
Mr. Conklin, on Saturday night.

Q. Yes, and on this occasion did you ask Judge Davis for a loan? A. Yes.

Q. How much did you ask for? A. Four thousand.

Q. Now, did Judge Davis tell you that he could lend you this money? A. He said he would try, he would let me know when he got back.

Q. Well, did he tell you that he would have to get this money from somebody else? A. From some friend, and it must be paid back as quick as possible.

Q. That is what he told you? A. Yes, sir.

Q. Did he then tell you that he did not have the money 4071
himself? A. I believe he did.

Q. And did you tell him at this time that you had not yet paid the twenty-seven hundred dollars' worth of State and county delinquent taxes on the Kaufman deal? A. Pardon me, but may I ask, wasn't that paid at that time? I paid it in February, wasn't it, or was it—oh, March, I beg your pardon, it was in March.

Q. That is our information. Now, do you remember when you did pay those taxes? A. I remember that I paid them as near the time I promised as I could, it seemed to me like——

Q. And I think you said this morning that you disposed of some fruit, or sold some bonds, that was it, wasn't it? A. Bought school bonds with fruit money.

Q. Yes, and then you used those bonds to pay the taxes? A. Yes, sir.

Q. Now, was that after Judge Davis's visit? A. As to the date, I can't—can't remember, gentlemen. I wish I could.

Q. Well, according to this wire, signed in February—— A. Yes, this was after this, that I paid the taxes.

4073 *By Mr. Harris:*

Q. After February 19th?

By Mr. von Holst:

Q. You paid them after February 19th? A. Yes, sir.

Q. Now, did you pay them after Judge Davis's visit, that was a few days after February 19th? A. I would say I did, it was sometime after.

Q. After Judge Davis—— A. Visit.

Q. —had made that visit? A. Yes, sir.

Q. After he had gone? A. Yes.

4074 Q. Now, then, did you tell him on this visit that you had not paid these taxes on the Kaufman deal? A. No, I didn't —I possibly told him I had sold some fruit and as soon as getting the return from it, that I would do it, I don't know but what I did that. I won't say.

Q. Well, his wire to you just before his visit says—— A. Take care of the taxes.

Q. —"Don't forget to pay your taxes today on time." The date of his wire is February 19th. A. Yes.

Q. Now, does that refresh your recollection—— A. Yes, it was some——

Q. —that you had some talk with Judge Davis about—— A. It was some days after that that I paid the taxes.

Q. Yes, but doesn't this wire refresh your recollection that you had some talk with Davis on his visit about the taxes, he just having wired you, "Don't forget to take care of them"? A. I don't think we went over the taxes, he didn't dig me any more than to be sure to attend to the taxes, and I did it.

Q. Did you go with Judge Davis to see Conklin about the mortgages and releases and other papers relating to your indebtedness to the Gerrard Company, and the Eustis Packing Company? A. Yes, sir, on a Saturday night, at Mr. Conklin's home. 4076

Q. Now, on the occasion of Judge Davis's visit with you in February, in 1936, that we have just been talking about, did he tell you that you didn't have to worry about the Kaufman principal and interest due April 1st? A. No, they have never—they have never told me that I didn't have to worry about it, that I know of, they punched me up continually.

Q. Well, did Judge Davis mention the Kaufman payments that were due April 1st? A. I don't believe he did.

Q. Did you mention them to Judge Davis? A. No, sir.

Q. You were borrowing, asking Judge Davis to lend you four thousand dollars. A. Yes.

Q. And in that conversation do you say that the question of the payments which were due April 1st to Kaufman did not come up at all? 4077

Mr. Harris: Just a minute. I object. That is repetitious. He just answered that question. He has answered it twice, as a matter of fact. He said neither he nor Judge Davis mentioned it.

Mr. von Holst: In view of the improbability I think I have a right to probe it.

Mr. Harris: Well, how many times do you probe it?

The Master: Well, perhaps there should be a limit to asking the same question, but I think you can

answer that question and drop it at that point, if he doesn't——

Mr. von Holst: All right, please read the question to the witness.

(The question was repeated by the reporter as follows:

"Q. And in that conversation do you say that the question of the payments which were due April 1st to Kaufman did not come up at all?")

4079 A. No, we were talking over this other loan.

By Mr. von Holst:

Q. And you didn't mention the Kaufman loan?

Mr. Harris: Now, I object to that.

Mr. von Holst: The reason is,——

Mr. Harris: That is four times.

Mr. von Holst: He says, "No", Your Honor, and on the record you always have the quarrel as to what "no" means.

Mr. Harris: You can ask him whether he means "no". I understand that. If you are just asking the same question, that is different.

4080

The Master: Have you got a question there to which there is an objection?

Mr. von Holst: Just read the last question, please.

(The question was repeated by the reporter as follows:

"Q. And you didn't mention the Kaufman loan?")

By the Master:

Q. Have you answered that already, do you think?

A. Yes, sir.

Q. Your answer is, "no"? A. Judge, Your Honor, might I tell the gentlemen that my fruit was hanging on the trees, enough to take care of the Kaufman loan, the Judge could see himself, when he was through my grove, and he didn't harrass me about the loan to Kaufman.

Q. Well, the answer is, no, he did not discuss it.

By Mr. von Hoist:

Q. Well, didn't you sell the fruit to the C. A. Marsh Company to get the money to pay the taxes? A. I did.

Q. So that fruit couldn't have been used for the Kauffman 4082
loan, could it? A. No, sir, but I had other Valencias, that wouldn't be ripe until in May.

Q. And the Kaufman loan was due in April? A. Yes.

Mr. von Hoist: Mr. Rodebaugh, could I have Amici Exhibit 94?

By Mr. von Hoist:

Q. And on March 10, 1936 did Judge Davis write you this letter, Amici Exhibit 94, enclosing the check, a photostat of which is in evidence as Amici Exhibit 111? A. Yes, sir, that looks like the check, and I turned it over to the Eustis Packing Company.

Q. The check being endorsed, "Pay to the order of the 4083
Eustis Packing Company, J. W. Davis"? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. The check having been made out to the order of J. W. Davis, correct? A. Yes, sir, yes, that is the check that I taken over and delivered to Mr. Conklin.

Q. And after that payment had been made to Mr. Conklin, did you then pay the State and county taxes? A. After this date?

Q. Yes. Oh, was it before this date? A. No, I think it was after that date.

Mr. Harris: You mean on the Kaufman property, he means?

The Witness: I won't be sure. I got these school bonds, it seems to me it was the latter part of March or 1st of April.

Mr. Harris: Mr. von Holst, you made a statement that it was March 9th that he paid those taxes?

Mr. von Holst: I thought it was.

Mr. Harris: Where did you get that? If that is right we won't contest it.

4085 Mr. Neuman: Mr. Harris, that is our information from the F. B. I.

Mr. von Holst: I will ask him.

Mr. Harris: Let it go at that.

By Mr. von Holst:

Q. Is it possible that you paid these taxes on March 9th? By these taxes, I mean the twenty-seven hundred dollars' worth. A. Yes, I had it in my mind that I only lacked five days later than my agreement to pay them, which was the 20th of February, but it is possible that it was a later date. If I had the check here you could see the exact date.

4086 Q. Have you got that check? A. No, I haven't. The Government has it.

Q. Well, anyhow, after you paid these twenty-seven hundred dollars' worth of State and County taxes, did you write Mr. Kaufman and tell him that you had paid them? A. I won't say for sure, but it seems to me that I sent him the paid tax receipts.

Q. Did you send them to him or to Judge Davis? A. Sent them to him, at the Ambassador Hotel, is my belief. I haven't anything to prove that.

Q. Did you write Mr. Kaufman that you would not be able to pay the April 1st, 1936, principal and interest on

time? A. I couldn't say. The correspondence was so poor, I don't know——

Q. Well, you did write Judge Davis to that effect, did you not, on March 31, 1936, referring you to a photostat of your letter?

(The letter was shown to the witness.)

By Mr. von Holst:

Q. It is on the next page. Maybe I can save you time. Starting at the bottom of page 1: "I am going to be a little 4088
late, with my payment & Int: to Mr. Kaufman, as I am holding my Valencias for a higher price." Is that right? A. Yes.

Q. So you told Judge Davis that in your letter of March 31, 1936, is that right? A. Yes.

Q. And you say that you did write Mr. Kaufman to the same effect? A. I can't say, it strikes me that I asked him to be lenient with me, that I would get it as soon as I could. I simply mentioned that to Judge, that I wasn't keeping anything back. I hadn't sold my Valencias.

Q. In March, 1936, did you know Mr. Kaufman's address? A. When he bid me "good by" in Trenton, he said I would keep in touch with him at the Ambassador Hotel.

Q. Where? A. New York City. I asked him how he 4089
spelled it, how many s's it had to it, Ambassador.

Q. Now, referring to when you told Mr. Kaufman "good by" that was on the 24th of October? A. When I left Trenton.

Q. At the Judge's chambers? A. Yes, the evening I left Trenton.

Q. He left, did he? That is, he told you "good by"? A. Yes, he left first, I believe.

Q. And then did Lord leave?

Mr. Harris: Just a minute, is he still trying to recollect on that?

A. No, sir, I can't say. It seems to me we left about the same time, he went to New York, and I went to Florida, and Lord and his wife taken me to the train in a little Ford coupe.

By Mr. von Holst:

Q. Mr. Lord took you to the train? A. Yes, sir.

Q. Well, did Kaufman leave first? A. I can't say.

Q. Well, now, after that meeting in the library broke up—— A. Yes.

091 Q. —did you see Judge Davis before you went to your train? A. Oh, yes, I bid him "good by".

Q. Well, didn't you tell Judge Davis that you had made a deal with Mr. Kaufman? A. He knew that, because we were using his stenographer, drafting these papers, I presume, that he did.

Q. I am just asking you whether you told Judge Davis, after the meeting was over and you were telling Judge Davis "good by", whether you had made a deal with Mr. Kaufman. A. Gentlemen, I couldn't swear to it. It was perfectly natural for me to say, "I thank you for getting the loan for me, negotiating the deal"; I more than likely certainly must have, it looks reasonable. I can't swear to it now.

092 Q. Well, I am not asking you to reconstruct anything, Mr. Stokley. A. I am trying to answer.

Q. I want you to give us your best recollection. A. Please, sir, Judge, if you can't remember, what shall I say?

The Master: Say you don't remember.

Mr. von Holst: Just say you don't remember.

The Witness: I don't remember. Thank you, sir.

By Mr. von Holst:

Q. I just want to ask you one more question on that subject, to refresh your recollection to this extent. Do you re-

ber that Judge Davis in your presence told Mr. Lord he could go to Florida for Mr. Kaufman? A. I can't er that.

. And wasn't it when Judge Davis told Mr. Lord that ould go to Florida for you that you told him that—— could get a Florida——

——you could get a Florida lawyer? A. Florida lawyer at looks a little reasonable, but I think this correspond—I thought over it since I have been away from you lemen, I must have wrote Judge and asked him to let et a Florida lawyer to eliminate the expense of Lord, I n't any record of it, but it seems kind of to my mind 4094
I did. No, there was nothing said as to Mr. Lord com to Florida that I recall, at Judge Davis's chambers.

he Master:

. You mean nothing said to Judge Davis? A. That is, ont of Judge Davis. You have a record here that Judge s said Mr. Lord would be down.

Mr. von Holst:

. That is right. Refer to this letter of Judge Davis to of November 14, 1935, where he says, "Mr. Lord will adv to leave here next Monday night . . ." A. Yes. 4095

Mr. Harris: That is part of Exhibit 109, Mr. von Holst?

Mr. von Holst: Yes, sir.

Mr. von Holst:

: Mr. Stokley, I show you Amici Exhibit 85, a photo of a letter of October 25, 1935, which is the day after meeting,—— A. Yes, sir.

——from Davis to Cooley, and another letter of the date, Davis to Cooley, and I call your attention to the that this letter, Amici Exhibit 85, says:

"Mr. Stokley has been here and has seen Morgan S. Kaufman of Scranton, Pennsylvania, and they have entered into an agreement whereby Mr. Kaufman is to pay to the Town of Mount Dora $10,000 and the town is to convey to him by deed the property which it took over from Mr. Stokley."

Now, did you tell Judge Davis that much of your agreement with Kaufman? A. No, I didn't tell Judge that, but he had everything—and Miss Kliesh, right there, she could have——

4097 Q. Now, while you were still there, on October 24th, do you recall that Judge Davis, in your presence, while you were there, dictated a letter to Mr. Cooley? A. I do not.

Q. I call your attention to the letter of October 25th,—— A. It says here——

Q. —T935. A. —I have been there.

Q. Yes, now, I am talking about the other letter. It says:

"My dear Mr. Cooley:

"I dictated a letter to you last night when Mr. Stokley was here, which was written this morning before your telegram was delivered, but I am sending it to you together with this letter."

4098 Now, does that refresh your recollection as to whether you recall that Judge Davis wrote Cooley or dictated a letter to Miss Kliesh—— A. Not while I was there.

Q. —while you were there? A. Not while I was there.

Q. You mean not in your presence? Because he says—— A. Well, he couldn't——

Q. —he did it while you were there. A. He couldn't have dictated it while I was in his chambers because I went on to my train, and Miss Kliesh had been busy with Mr. Kaufman's contract during the whole time, and Judge was in his chambers, in his main office, like you come in the door.

Q. What time did your train go? A. About 5:20, I believe. It was something after five.

Q. Now, coming back to this March, 1936, loan that Judge Davis made to you,—— A. Yes.

Q. —did you have any agreement with Judge Davis in writing as to when this loan should be repaid? A. I have no recollection of a contract as to the date that it was to be paid.

Q. Did you have an oral understanding with him? A. Did I have what kind of an understanding?

Q. Did you have a contract or an agreement with him, not written, just by word of mouth, as to—— A. I aforesaid, he says, "Charlie, pay it back as quick as possible", that, "I got a loan, or got from a friend for you, I didn't have it myself." 4100

Q. He just said as quick as possible? A. Yes.

Q. He didn't fix any time? A. Well, I told him I was going to pay a thousand dollars a year and the interest, but I could easy do that, I thought the grove would carry that much.

Q. You were going to pay interest? A. Yes.

Q. How much interest did you agree to pay? A. Eight per cent.

Q. And how was that interest to be payable? A. Well, as I have said, I don't know whether it was semi-annual, or the end of each year. 4101

Q. Now, we are not talking about the Kaufman deal, now,—— A. No.

Q. —we are talking about the—— A. Four thousand.

Q. The four thousand. You don't remember whether it was semi-annual,—— A. No.

Q. —or annual? A. No, I do not know, but it was eight per cent interest, annual.

Q. Well, how did you pay it? Did you pay it annually or semi-annually? A. Every time I got a dollar, I sent it to

Judge on this, trying to get it paid off. I got it paid down, it seems to me, about fourteen hundred dollars.

Q. And were you given any memorandum or receipt from the Judge, statement of account, showing you just what you owe on this loan? A. Well, I am ashamed to tell you, I have not.

Q. Now, how much have you repaid on this four thousand dollar loan that Judge Davis made you?

Mr. Harris: Both principal and interest?

4103 A. About twenty-eight hundred.

By Mr. von Holst:

Q. That is both principal and interest, twenty-eight hundred? A. Yes, about that. Please, sir, does Judge claim I paid more?

Q. I don't recall, Mr. Stokley, what his testimony was. A. Out of court, I send Miss Kliesh a nice box of oranges through the season; and she keeps my account for me, and I can willingly trust her. It is nothing to her.

Q. Well, you want that on record, Mr. Stokley. Whatever you want to say, just say it, provided we don't take up too much time. I show you a letter, Amici Exhibit 114, signed "Charlie," and directed to "Dear Judge," which says:

4104

"Inclosed find check for 500.00 first payment on Orange Co. Grove."

Now, that refers to the loan which Judge Davis made you of four thousand dollars, in March, 1936? A. Yes, sir.

By the Master:

Q. What is the date of that letter? A. 3rd, 25th, 37.

By Mr. von Holst:

Q. Now, wait a minute, Mr. Stokley, you are reading from a little pencil memorandum at the top, aren't you? A. Oh, beg pardon.

Q. Now, wait a minute, I can fix the date of that letter for you. I now show you a letter which Judge Davis identified as a carbon of a letter that he wrote to you on March 29, 1937, this letter being Amici Exhibit 114, and Judge Davis's letter says:

> "Your letter inclosing the check for $500 on the principal of the $1000 on your Orange County grove 4106
> was received."

So your letter to the Judge—in your wife's handwriting, isn't it? A. Yes, sir.

Q. —must have been shortly before the Judge's letter to you of March 29, 1937, isn't that right? A. Yes, sir. Now, I am looking, you see, the Richmond Fruit Company, I came down to Norfolk and I stopped at Richmond and went on down, and sent Judge the other five hundred through the Richmond Produce Company, and Mr. Burton made out his check and I sent it direct to Judge from the company for the fruit. I didn't give him my personal check. There is a record of that, or, at least, he acknowledged having received 4107
it.

Q. That was the second payment? A. This one that I spoke of, that as soon as I got the fruit, I spoke here, you know, that I had sent to Richmond.

Q. In other words, the second payment is the payment which you say you will make—— A. From Richmond.

Q. —in your longhand letter to the Judge, which says, "I will send five hundred more, as soon as I hear from my Richmond fruit." A. Yes.

Q. Now, this payment which you made in your letter, which the Judge acknowledges in his letter of March 29,

1937, was the first payment that you had made to the Judge on the four thousand dollar loan, is that right? A. Yes, sir.

Q. Principal or interest? A. Yes.

Q. Now, I show you a letter, a photostat of a letter, dated June 18, 1936,——

Mr. Harris: What is that marked?

Mr. von Holst: Amici Exhibit 115.

By Mr. von Holst:

Q. —signed "Charlie." Is that letter in your handwrit-

4109 ing?

(The witness examined the letter.)

A. Yes. Can you read it? You can beat me if you can.

Mr. von Holst: I will confess to a little difficulty, Mr. Stokley.

The Witness: Well, if it got cold, I would, too.

By Mr. von Holst:

Q. Now, this letter is dated June 18, 1936, isn't it? A. June 18, '36, yes, sir.

Q. Now, in this letter you say: I have nearly 300.00 due

4110 me from—— A. Stores.

Q. "—stores I shall send on." Now, I think there is a period after "stores," isn't there, or should be? A. Should be.

Q. "I have nearly 300.00 due me from stores," period. A. Yes.

Q. "I shall send on Interest—— A. That is what I meant to convey.

Q. "—Saturday to you," period.

Mr. Harris: I would read that the other way, "I have nearly 300.00 due me from stores I shall send

on Interest," in other words, payment of three hundred dollars on account of interest. It might read either way.

Mr. Thiess: Yes.

By Mr. von Hoist:

Q. Now, Mr. Stokley, what is this interest? A. It is the interest on the four thousand.

Q. Well, now, the four thousand dollar loan was on March 10, 1936, is that right?

Q. And your letter is June 18th, 1936? A. Yes. 4112

Q. Now, was there any interest due on the four thousand dollar loan in June? A. Well, there should be.

Q. Well, I understood your prior testimony to be that you were to pay that either annually or semi-annually, you didn't remember,— A. Now, let's see.

Q. —and that letter is only from March to June, three months after the date of the loan, isn't it? That is right, isn't it, it is only three months after the four thousand dollar loan? A. Well,—

Q. Well, that is right, isn't it? Answer that question first, it is only three months after? A. Only three months according to the dates here, yes, sir. 4113

Q. Yes. Now, then, I ask you whether that interest that you referred to there is not the past due interest on the Kaufman loan which was due April 1st. A. I didn't have Kaufman's in mind at all when I was writing Judge this letter. He could apply it either way he wanted to, on my interest, or on the principal, but up to that time had I sent him the—had I made up the thousand dollars with the two payments from Richmond Produce Company?

Q. Just a moment, we will find out.

Mr. Harris: March, 1937.

By Mr. von Holst:

Q. Mr. Stokley, don't let's get mixed up on years. This letter that I formerly called your attention to, Amici Exhibit 114, in your wife's handwriting, was written in 1937, a year later than this letter (indicating)—— A. Here.

Q. —Amici Exhibit 115, to which I am now calling your attention, so when this letter of June 18th, 1936 was written you had not paid anything on the principal to Judge
4115 Davis, had you? A. Why, yes, I paid something on the—where was the fruit company, Richmond Fruit Company, what date is this one right here?

Q. This letter that you just called my attention to? A. No, over here, he had received it.

Q. Yes. A. That is '37.

Q. In '37, exactly. A. Well, I hadn't even got the loan here, then, from Judge, for the S. A. Gerrard Company?

Q. No, sir, you had got the loan in March, 1936; is that right? A. That is correct, I believe.

Q. And I understood your testimony, that you made the first payment on that loan—— A. About——

Q. —in March, 1937. That is what your letter says,
4116 written in March, 1937, does it not?

"Inclosed find check for 500.00 first payment on Orange Co. Grove."

A. I sent five hundred from Richmond—couldn't that—isn't it possible that I didn't get the date right here? From the looks of those letters it looks to me like this should be '37, in June, and this one (indicating) is in March.

Q. When you say "this one", that you think the date is wrong, you mean the one that is marked 115, Amici Exhibit 115. Well, read the whole letter of June 18, 1936, Amici Exhibit 115, to yourself.

(The witness examined the letter.)

The Witness: Gentlemen, this was in '37.

By Mr. von Holst:

Q. And how do you establish that? A. I don't believe that the records of my cold storage company will show that I stored any in '36. I think this is '37.

Q. By "this", you are referring to Amici Exhibit 115? A. Yes, sir.

Q. Now, then, I want to ask you——

The Master: May I see the copy? 4118

By Mr. von Holst:

Q. —on the first page of this letter dated June 18, 1936, you say, "I sold Marsh Fruit Co., Orlando $3988". A. Yes.

Q. Now, you sold that fruit to Marsh in 1936, didn't you? A. '37——

Q. Isn't that the fruit that you sold to Marsh to get the bonds to pay the taxes in March, 1936? A. This statement of here looks just like what I received in '37.

Q. Now, wait a minute, Mr. Stokley, please answer the other question first. Wasn't this fruit that you sold to Marsh the fruit that you sold to Marsh in March, 1936, to 4119
get the bonds to pay the taxes? Now, will you answer that, please, first? A. That is the only year that I sold Marsh Fruit Company any fruit.

Q. That is '36, is that right? A. It strikes me, gentlemen, that that is right, I won't swear to it, but it should be, I believe.

The Master: Did Judge Davis ever acknowledge this letter?

Mr. von Holst: We can't find any.

The Master: Found no acknowledgment in the files?

Mr. von Holst: No, sir.

Mr. Thiess: Judge Davis said he couldn't find any.

By Mr. von Holst:

Q. Now, then, I understand you that this letter was, according to your best recollection, written in 1936, as of the date that it bears, is that right? A. I am mixed up with it. Here is some transactions in '37.

Q. Which transactions in '37?

4121 By Mr. Harris: You are referring to the second page of the letter, are you? A. Yes, sir.

By Mr. von Holst:

Q. How do you know those transactions are in '37? A. We dusted and sprayed our first time in the spring of '37, putting on sulphur dust, and it came out in '37, in paying Tom Cooley, I paid him two hundred dollars, and I paid him one hundred dollars in '36, and then when his brother run over a man and killed him, he come up there one night and said he had to have some money, and couldn't I get it up, and so I got Tom up another hundred, and that was

4122 in '37.

By Mr. Harris:

Q. How about Elmer's operation? A. That was the son that had—he was ruptured riding a cow pony.

Q. Your son? A. Yes, my son Elmer, and I had him taken to the hospital and sewed up.

By Mr. von Holst:

Q. When? A. That operation cost me $207—in '37.

Q. And what hospital did he go to? A. I can get you the record, from the Orange General, I believe.

Q. The Orange? A. But, gentlemen, this thirty-nine, the Marsh Fruit Company, was done, was transacted in '36. I am not trying to cover or withhold anything, but it was in '36, but my letter—I can't—it has got me.

Mr. Harris: Well, maybe you wrote the first half in '36 and the second page in 1937.

The Witness: I don't understand it myself.

By Mr. von Holst:

Q. Now, didn't you dust in 1936? A. '37.

Q. Didn't you dust in 1936? A. No, sir, no, this lime 4124
sulphur invention, by Snar, was gotten out so that we used it in '37.

The Master: Have you got another handwritten letter that might have been confused with that, as to the first or second page?

Mr. Harris: Well, at any rate, Mr. von Holst, you are interested in page one, and that seems to have been written in '36.

By Mr. von Holst:

Q. Are we agreed on that, Mr. Stokley, that this first 4125
page was written in 1936?

Mr. Harris: Refers to '36.

A. I will agree, gentlemen, that this Marsh payment for oranges was intended for '36.

By Mr. von Holst:

Q. Well, but I want to know whether this first page of this letter was written in 1936. A. Well, it was all written the same time, wasn't it, number 2?

4126 *Charles Lee Stokley—For Amici Curiae—Direct*

Q. Well, I don't know. Was it? A. I should say it was all written the same time, Judge, sir.

By the Master:

Q. You think these two pages were written at the same time? A. Yes, sir.

By Mr. Harris:

Q. Well, were you trying to fool the Judge a little bit? A. I don't think so, I think I was putting my cards on the
4127 table.

Q. By giving him a '36 sale in '37?

By Mr. von Holst:

Q. But, Mr. Stokley, on the top of page 2 you say:

"As you know I was broke when I went to see you."

Now, what occasion is that referring to? A. The first money I realized from oranges I——

Q. Bought fertilizer? A. Bought—fertilized them, and then I bought seed for gardening, see, I truck quite a little, buy eight and ten bags of English peas for planting.

4128 Q. You don't say anywhere in this letter of June 18, 1936, Amici Exhibit 115, that you had already paid the Judge any money, do you?

Mr. Harris: Well, I must say——

A. These letters?

By Mr. von Holst:

Q. These letters, by "these letters" you refer to Amici Exhibit 114, and your letter to the Judge; the Judge's letter to you dated March 29, 1937, isn't that right? A. Yes.

Q. Now, that letter of March 29, 1937 shows that you had by that time in 1937 paid the Judge five hundred dollars? A. Yes.

Q. And that you expected to make another five hundred dollar payment? A. Yes.

Q. Did you make that other five hundred dollar payment? A. Quite sure.

Q. All right. Now, then, if this letter, Amici Exhibit 115, were written in 1937 it would have been after you had made at least the first five hundred dollar payment on the loan, wouldn't it? A. Bound to be.

Q. That is clear. Now, you don't say anything in that 4130
letter about having made a five hundred dollar payment on the loan, do you? A. Not in here.

Q. In this letter—— A. No.

Q. —of June 18, 1936? A. No, sir.

Q. Well, doesn't that refresh your recollection, that the whole letter was written in June, 1936? A. Well, with the exception of the items that I know belongs to '37.

Q. Well, isn't it possible that you are wrong on those items being in 1937?

By the Master:

Q. Did you give the name of the hospital where the oper- 4131
ation took place? A. I can get a statement from the hospital as to the date.

Q. What was the name of the hospital? A. Either Fonosis, or the Orange General, I won't say for sure which hospital he was in,—Fonosis, I believe, it is a——

Q. In what city? A. No, sir, I can have the record sent to you.

By Mr. von Hoist:

Q. In what city is that hospital? A. Orlando.

4132 *Charles Lee Stokley—For Amici Curiae—Direct*

Q. One other point, Mr. Stokley. I show you a letter from Cooley to you, dated November 29, 1935, is that right?

(The witness examined the letter.)

A. Yes, '35.

By Mr. von Holst:

Q. And he there encloses his bill in the sum of one hundred dollars, "For my services performed for you in connection with the Davis Loan," is that right? A. Well, ——

4133 Q. Well, that is right, isn't it? A. Yes, but see here, lawyers can make mistakes, as much so as anyone else. There was a bona fide trade, two hundred dollars, and I paid him two hundred dollars. This hundred was the first payment that I made him. As I aforesaid, when his brother ran over a man and killed him, just out of Mount Dora, he came to me in the night and he sorely needed the other hundred dollars, so I got it.

Q. Well, when did you get him the other hundred dollars? A. Well, some months afterwards. I couldn't state correctly when I gave him the other hundred.

Q. Well, was this accident in which you had to pay him
4134 another hundred dollars, was that in 1937? A. When was I paying him this hundred?

Q. I don't know, Mr. Stokley, he bills you —— A. '35.

Q. He billed you on November 29, 1935. A. Up to that time had he given me his services? Does that show according ——

Q. That is right, that is right, the deal was closed on November 25th. A. Yes.

Q. So he apparently lost no time in sending you a bill. A. I don't believe he did.

Q. And he sent you a bill for a hundred. A. Yes.

Q. And your letter of June 18, 1936, Amici Exhibit 115, shows "Paid Thomas Coley, attorney 100.00", doesn't it? A. Yes.

Q. So that item in your letter could well refer to what you paid Cooley for his bill of November 29, 1935, couldn't it? A. Yes, it could.

Q. Well, what is your best recollection as to the first page of this letter of 1936, June 18th, 1936?

Mr. Harris: Do you mean when it was written?

Mr. von Holst: When it was written.

The Witness: What year it was written? 4136

Mr. von Holst: Yes.

The Witness: Well, gentlemen, it says '36 and I would have had to acknowledge, if I didn't make a mistake, that was '36, because I certainly sold Marsh this fruit in 1936.

By Mr. von Holst:

Q. Now, then, will you obtain for us and send to Master White, Land Title Building, Philadelphia,— A. Yes, sir.

Q. —the hospital records— A. For Elmer's operation?

Q. —of Elmer's operation, which is noted on page 2 of this letter, "Elmers operation 207.00". A. I will do that, I 4137 will get that, if—

Q. Also, if you have it, the repair bill noted here, "repair on . . ." You help me: A. Store building.

Q. —". . . store bld. morigage— A. To Kaufman.

Q. —". . . to Mr. Kaufman new roof 471.00"? A. Yes, sir, that is correct.

Q. Will you do that? A. It was 36 by a hundred feet, and that is the contract price for putting a built-up roof on it—yes, I will get that, too.

Q. Well, now, Mr. Stokley, I again ask you, coming back to this letter of June 18, 1936, and the first page of it, wasn't

4138 that interest that you said would send on the past due interest on the Stokley loan which had matured April 1st, 1936?

Mr. Harris: You mean——

By Mr. von Holst:

Q. On the Kaufman loan. A. On the Kaufman loan—well, if it had of been, it looks reasonable, see here, that I would say the same as I spoke about Kaufman's building that I repaired, apply—notify Kaufman that this interest will come.

4139 Q. In other words, you told Judge Davis that you had spent $471 repairing the roof—— A. On the cement building.

Q. —on the Kaufman building, the cement building A. Yes.

Q. And you think you may have been going to send on to Judge Davis the interest?

Mr. Harris: Well, no, he didn't say Judge Davis.

The Witness: No, I would have specified that it was Kaufman's interest, it seems to me.

By Mr. von Holst:

4140 Q. Oh, that is your point.

Mr. Harris: In view of the fact that he has specified Kaufman on the second page, he would specify Kaufman on the first page.

The Master: The letter says, "I shall send on Interest Saturday to you."

Mr. Harris: He said if it had been Kaufman's interest he would have said Kaufman, because he said Kaufman in connection with the repairs to the building.

By the Master:

Q. The question is, what interest was that.

Mr. Thiess: He didn't hear you. Will you read the question to the witness?

(The question was repeated by the reporter as follows:

"The question is, what interest was that.")

By Mr. Harris:

Q. On the first page of this letter. A. It was three hundred dollars interest that I said I would send on. 4142

By the Master:

Q. Interest on what? A. Interest on money.

Q. What money? A. That was due Judge Davis—this gentleman won't hear me it was on the four thousand, because he says six months hadn't expired. Wasn't that right?

Q. Well, then, what interest was it? That is the question. A. I can't say. If it had been up to me I would just as lief say it was for Kaufman, but I couldn't say it was or swear to it, because I specified Kaufman's roof there and I would say Kaufman's interest—no secret to keep about it to me. 4143

By Mr. von Holst:

Q. Well, there wasn't any interest due on June 18th from the Davis loan of four thousand dollars in the preceding March, was there, made in the preceding March? A. You mean there wasn't six months due?

Q. That is right. A. I have told you before, though, he says, "Pay it off as fast as possible", and I was doing that, with the two payments——

Q. Well, what you were to pay off as fast as possible was the principal, wasn't it? A. The whole thing.

By the Master:

Q. Perhaps this will clear it up. You say at the top of the second page, Mr. Stokley, "As you know I was broke when I went to see you . . ." A. Yes.

Q. When was that you went to see Judge Davis? Was that in October of 1935? Is that what you mean? A. Gentlemen, couldn't it be that I went to see him down at the
4145 hotel to get the loan, because I was broke when I got the four thousand.

Q. Well, the question we are asking you, Mr. Stokley, is what you referred to when you say here, "As you know I was broke when I went to see you . . ." Now, where was it that you went to see him, and when? A. I went to see him down to the Lakeside Hotel and—I believe I was referring to the time that I went to see him to get cleared up with S. A. Gerrard Company.

By Mr. von Hölst:

Q. And that was in February of 1936, wasn't it? A. That
4146 is when I got the loan, wasn't it?

Q. Yes, but that is when you went to see him, wasn't it? A. Oh, I am talking about after—this is after I had borrowed the money——

Q. Yes. A. —from Judge Davis, from S. A. Gerrard Packing Company.

Q. In other words, the February, 1936, or the March, 1936, $4,000 loan? A. Yes.

Q. And Judge Davis gave you a check? A. And I said here that I was broke at that time.

Q. Yes, and when you say, "When I went to see you", you are referring in that letter to the time that you went

to see him about the this $4,000 loan, in March of 1936? A. It could be. That is the only way I can term it.

By the Master:

Q. Well, what is your best recollection, Mr. Stokley? A. That is my best recollection, when I was writing this letter I was trying to give him the idea of appreciation, that I was broke, and he helped me out, and I was wanting to give him a statement as to what I had done with my proceeds, that I hadn't squandered any of it.

Q. And you say, "The first money I realized from oranges", and then you went on to give an account of it. A. Yes, sir. 4148

Q. Was that the first money that you took in, then, after you went to see him, when you say you were broke, that is what you mean, is it? A. Yes, sir, and I had spent $1,197 for fertilizer that I put on the groves, I was simply giving him a statement as best I could, that though he was kind enough to lend me four thousand, I wasn't wasting any of my substance.

By Mr. von Holst:

Q. Now, Mr. Stokley, in the summer of 1936 you sent Judge Davis a diamond, did you not? A. Yes, without his request. 4149

Q. And that diamond was worth about three thousand dollars or more? A. I bought it from Dr. Phillips, I should say something like that.

Q. When did you buy it from Dr. Phillips? A. Two years before that, I believe.

Q. In 1934? A. I have my receipt with the diamond, the date. I can get that from Dr. Phillips any time.

Q. How much did you pay Dr. Phillips for it? A. I can't say just what I paid Dr. Phillips for it.

4150 *Charles Lee Stokley—For Amici Curiae—Direct*

Q. Your best recollection, Mr. Stokley, you certainly have some idea, haven't you, of how much you paid Dr. Phillips for that diamond? A. I would say around twenty-two hundred dollars. There was a friend of his, Mr. Gautier with me, and we were on a trade for the grove, and he says, "You buy the diamond and I will buy the grove." I can't state just how much I paid for it, correct, but I think it shows on my receipt.

Q. Well, you think you paid around twenty-two hundred dollars for it? A. Yes.

Q. And you bought that in the summer of 1934? A. I
4151 can't say that.

Q. Well,— A. I had quite a—

Q. Well, I understood you to say that you bought it about two years before you sent it to Judge Davis, is that right? A. I had had it some time before, I won't say as to just how long before.

Q. But didn't you say a moment ago that you bought it from Dr. Phillips about two years before you sent it to Judge Davis? A. Yes, but my memory isn't clear on that, as to how long I had had it in my possession.

The Master: Didn't Judge Davis say that he had the receipt in his possession?

4152 Mr. Harris: He said that he had it in his safety deposit box.

The Witness: It is a solitary diamond.

Mr. von Holst: But that would be the date of receipt by Judge Davis.

Mr. Harris: No, I understood Judge Davis to say that there was a bill or something in the box.

The Master: I think he said a receipted bill with the diamond in the box.

Mr. Harris: I think so.

The Witness: That is Dr. Phillips' receipt that he gave me.

Mr. Harris: Maybe that was a bill.

The Master: I understood him to say a receipt.

Mr. Harris: Yes.

The Master: Couldn't that be determined from that source?

Mr. Harris: I think that would be the simplest way to find out, by just subpoening it.

Mr. Thiess: The witness says it wasn't a bill he got from the Doctor, that is of record, I think.

Mr. Harris: At any rate, if the diamond is there, and there is a bill—

The Witness: There is a receipt with it. 4154

Mr. Harris: —for several thousand dollars, it tends to clear this thing up. I should think that would be the simplest thing.

The Master: I should think so.

By Mr. von Holzt:

Q. Well, Mr. Stokley,—— A. At the time I secured Judge Davis I gave him ample security for the four thousand, but we had a freeze that killed part of the Orange County trees, and I had this diamond, and I sent it to him, without his request, if anything should happen he would have that much security.

4155

Q. How did you sent it? A. Expressed it, I believe—I won't say that—or registered mail, possibly.

Q. Did you send any accompanying letter? A. Not with the diamond. I wrote a letter either before that, that I was sending it—I think Miss Kliesh wrote a letter of acknowledgment, that they put it in the safe.

Q. Well, Mr. Stokley, among the letters that have been produced by Judge Davis there is no letter referring to this diamond. A. Well, he never wrote and asked me for it, nor I haven't anything more than I know he has it, because he told me so, and put it in the safe.

Q. Now, what is your best recollection as to when you bought that diamond from Dr. Phillips? A. Well, gentlemen, the date will be on the receipt, there is no need of guessing that.

Q. I know, Mr. Stokley,—— A. I would only be guessing as to the date.

Q. Well, was it before 1935? A. Oh, yes.

Q. Well, was it in 1934, do you think? How long before 35? Now, in 1935 you got this loan from Kaufman, didn't you? A. Yes.

Q. Now, using that as a landmark in your memory,—

4157 A. Yes.

Q. —about how long before that did you buy this diamond from Dr. Phillips? A. Some years before that, I can say.

Q. Two or three? A. Let me just explain to you, during my experiences, I have owned a chain of drug stores, been a farmer now, and I have sunk about seventy-five thousand dollars in the drug stores, after the boom burst, but when the boom was going on, I made money so fast, gentlemen, can't just—any fool could make money in Florida, Judge at that time, and that was when I was dickering in real estate and diamonds and all kinds of property.

4158 Q. Well, did you have this diamond in your possession when the Town of Mount Dora foreclosed on you in 1935? A. I had it in my possession before that, and went to the bank at Sanford, to Mr. Engle, and tried to get a carload of fertilizer, and he had a jewelry man to examine it, and he says, "It is only a commercial stone, that Dr. Phillips has stuck Charlie with, and he has more than likely brought over from Germany, and I wouldn't let him have more than five hundred dollars for it", so he was kind enough to hold it for thirty days to get five hundred dollars on a house dollars' worth of fertilizer. That is the only time that I taken it out of—out of my possession.

Q. Is it a real diamond? What do you mean by a commercial stone? A. I couldn't tell you.

Mr. Harris: You know what a commercial stone is.

Mr. von Holst: I am entitled to ask it.

Mr. Harris: Don't you know what they are?

By Mr. von Holst:

Q. Will you answer the question? A. What is a commercial stone?

Q. Yes, what do you mean by that answer? A. I meant 4160
a—not a blue white diamond, gentlemen, excuse my ignorance for trying to specify a diamond, but it is of a commercial value, it will cut glass, but it isn't a perfect gem.

Q. Did you ever have that diamond appraised? A. Only as Mr. Engle sent it over to a Mr. Worth, who is a jewelry man in Sanford.

Q. And what was the appraisement value? A. Five hundred dollars.

Q. Is that what they appraised it at? A. That is what Worth appraised it at, the jewelry man in Sanford, where I was trying to buy fertilizer with it.

By the Master: 4161

Q. Well, he said he wouldn't let you have more than five hundred dollars on it? A. Yes, sir.

Q. Is that what he said? A. Or he would—Mr. Worth didn't—didn't appraise it, I don't believe, to the banker, only he said it was a commercial stone.

By Mr. von Holst:

Q. Now, you were first interrogated about this diamond before the United States Attorney in New York, were you not? A. Yes.

Q. And at that time did you say that you didn't remember having a diamond? A. I don't know what I told him. I got his—he handed me his pen and told me to correct it, and I corrected—told me look it over and check it, and I put down, I didn't remember.

Q. Well, that is what I am asking. A. Yes.

Q. In other words, as I remember it, the answer first of all was, "No", and then you went over it again and you put, "I do not remember", is that right? A. I was under the impression he asked me if I had a valuable diamond at that time.

4163 Q. Yes. A. And I said no.

Q. Yes, and then you said after that, in your own writing, "I do not remember", is that right? A. Quite sure, that is what I intended to.

Q. And then they asked you about that again? A. If there was a diamond ring, and I says, no, it was a solitary diamond, just a stone, wrapped up in a piece of paper.

Q. And you told them that you said you didn't remember because they asked you about a diamond ring, is that right, instead of about a diamond? A. No, I was speaking in the Federal Court, when Judge McLellan was—during the trial, they asked if it was—or, Kaufman says, "What about that diamond ring?", and I says——

4164 Q. You mean Gahagan? A. Gahagan, and I never put up any diamond ring, and he says—Judge says, "He told you it was a solitary diamond."

Q. Now, will you state, Mr. Stokley, when you made your first payment on either principal or interest on the Kaufman loan? A. You say, will I state——

Q. Yes. A. —when I made the first? I have paid about fourteen hundred dollars interest, and as to the dates, the first or second, or any payment, I couldn't swear to it. I paid five hundred at one time, I think it shows that I paid him six hundred once, and I can tell you this, I owe him $13,804.

Q. At the present time? A. At the present time. That is interest and principal.

Q. So you haven't paid off any of the principal yet? A. No, sir.

Q. Well, now, did you make any payments on the Kaufman loan, principal and interest, in 1936—the loan having been made on November 25, 1935, you remember—now, I want to know whether you made any payments the next year, in 1936? A. I believe that the taxes was all that I paid that year. They were so much delinquent taxes, it was practically all was paid that year.

Q. Now, then, did you make any payments to Kaufman 4166
in 1937? A. Quite sure I did.

Q. Have you anything to show whether you did or not? A. The Government has all my papers, and I believe they have cancelled checks to him at that time. They should have.

Q. Now, Mr. Stokley, all that we have been able to get is this check of yours dated May 15, 1939, for six hundred dollars, payable to Morgan S. Kaufman. A. Well, there should be a five hundred dollar one before this one. You haven't any other checks, photostatic copies, but this?

Q. That is right. A. It was paid before that.

Q. Well, this check is 1939. Do you recall making this 4167
payment—— A. Yes, sir.

Q. —of six hundred dollars? A. Yes.

Q. Well, did you make any payment in '38? A. Sure I did.

Q. On the principal or the interest? Well, I withdraw that question, you have already stated that you paid nothing on principal. A. Yes, sir.

Q. Well, are you sure you made any payments in 1937? A. When was—pardon me, but may I ask this?

Q. Certainly. A. When was the investigation of Judge Davis started?

Q. I would like to ask you that,—— A. Well, why I am asking that, Judge,——

Q. —because we don't know, we don't know, Mr. Stokley, frankly, I don't know; but I would like to ask you, and it may help to fix your memory on the question I am inquiring about, when did the Department of Justice, or the F. B. I., or anybody in connection with the United States Government, first talk to you about this matter? A. It seems to me that they got all my papers and talked to me about it in '37, and I certainly had some checks similar to that of four hundred dollars, and one I know of five hundred dol-
4169 lars, and I had a little account book or record showing how much fertilizer I had used on Kaufman and how much I had paid him, and so on.

Q. Well, Mr. Stokley, I don't think it was '37, I don't think anybody here thinks it is '37.

Mr. Harris: I had an idea it was '39, but I may be wrong.

The Witness: There was some paid before this check, gentlemen.

By Mr. von Holst:

4170 Q. Yes, but about the time when the Government first came to you about this matter, have you any way of fixing that, any letter, or memorandum, or anything? A. It was about three years ago.

Q. Well, this is '42. A. This is '42.

Q. Yes. A. It was '37 or '38, my fruit froze in February, in '38, and I was at Foley Square,——

Q. New York? A. —New York, in the Court, and, Judge, they kept me up there twenty-one days, and after abusing me and quizzing me, and so on, instead of acting intelligent, like you gentlemen, they asked me questions as to how old my boys were and what they were doing, and what I named

them and those children being born so fast, I forgot the ages, and they drug me upstairs or down, five lawyers, before a judge that had a black gown on and a square hat on his head, and he was the only man in New York, in twenty-one days, that give me a pleasant look, and what they charged me with, I can't tell you, gentlemen, but it seemed like it was withholding evidence and the witness wouldn't answer the questions, and I had a wire sent to me that morning that my fruit was froze, it went down to 22, and if I could get away quick I could salvage the fruit and get about thirty-five hundred dollars out of it, to a juice plant.

Q. And you think that freeze was when? A. In '37. 4172

Mr. Harris: You said '38 a while ago.

The Witness: '38, '38, February.

By Mr. von Holst:

Q. Well, Mr. Stokley, the United States—put it this way, what you have been telling us about at Foley Square, when you were taken before the judge, and all the rest of it, happened in 1940, in February, was it?

Mr. Thiess: January.

By Mr. von Holst: 4173

Q. January and February, 1940. A. Gentlemen, we didn't have a killing freeze in 1940, our weatherboard record, I can prove that.

The Master: Maybe the witness doesn't refer to the Grand Jury investigation, but to some private examination.

By Mr. von Holst:

Q. Were you examined before your went up to the Grand Jury in New York, before you went before the Grand Jury

in New York? A. No, nothing more than to bring all my papers, and so on, and then I was taken before the Grand Jury, and I was up there twenty-one days, and they told the chief deputy not to exchange words with me, made me feel like I was a desperate character, that he mustn't talk to me.

Q. Now, when this investigation started, did you communicate in any way with Judge Davis? Did he tell you that he was going back North to find out about it? A. Do you mean when Judge Davis was last in Florida?

Q. No, I mean, when this investigation started, did you communicate with Judge Davis? A. I didn't know anything
4175 about the investigation, as to what it was about, when they subpoenaed me to New York, and like I sat down with you gentlemen, I thought I could tell you all I knew in just three minutes, and——

Q. Well, had you talked to Judge Davis before you went up? A. No, sir.

Q. Did you talk to him after you got back? A. Yes, I talked with him—let me tell you, I was fool enough, when the following Sunday come, to come from New York over, not only to save hotel expenses, but always when I was in this country I visited him, and I went to see Judge on Sunday and had Sunday dinner with him, and all the
4176 world we discussed about the proceedings was, he says, "You know the facts, tell the truth, Charlie", that is all there is to it, and they hounded me three days as to what we talked about, and during my Sabbath there with Judge, why, I told them open and above board, I says, "Why, always when I am in these parts I go to see Judge when I can", and I didn't think there was any reason to go to see him, I didn't——

Q. Well, unless you want to go on, Mr. Stokley, I just wanted to know whether in 1939, when Judge Davis was in Florida, didn't he tell you that he had heard of this investigation and was going North to—— A. No, sir, I was at Norfolk at the time, and he came up from Miami——

Q. Yes. A. ——and stayed all night at my home.

Q. Yes. A. And then came on North, and I didn't get to see him. He didn't come through Norfolk, he came up over the Main Line, I presume he did, I don't know. I didn't get to see him, though.

The Master: May I interrupt at this point to say that I will sit as late as you gentlemen want to sit, to get through with Mr. Stokley today, even if it is in the evening, but it is quite apparent you won't be through by the usual time of adjournment.

Mr. von Holst: Well, I am almost through——

Mr. Harris: We are almost through. 4178

Mr. von Holst: ——with our investigation.

Mr. Harris: I have no cross-examination.

The Master: Well, go ahead.

By Mr. von Holst:

Q. Now, it is the fact, is it not, Mr. Stokley, that you made substantial payments on principal to Judge Davis on his loan? A. Yes, sir.

Q. And you haven't made any payments on principal to Mr. Kaufman? A. No, sir.

Q. And you have paid more to Judge Davis than you have to Mr. Kaufman? A. Yes, sir.

Q. Why was that? Mr. Kaufman's loan was made first, 4179
wasn't it? A. Yes. Judge Davis requested that I pay it as quick as possible, that he got this—had to pay this back, and I just felt, carrying as heavy an interest as I was with Mr. Kaufman, if I could keep the taxes and the interest up, I had spent thirty-five hundred dollars on the same property that I deeded to Kaufman since I—since I got the loan, and I could have paid Mr. Kaufman off, and he says, "Don't bother about that, when it is in litigation", I believe is the words he used, or something, and, "We will tend to that after it is out of litigation", or after it is settled, or something, I don't know.

Q. Well, wasn't he there referring to this Government investigation? A. I don't think so.

Q. Well, he told you that the property down there was in litigation? A. That was my understanding, gentlemen. As to what he meant, I don't know, but he said I didn't——

Mr. von Holst: I offer in evidence——

The Witness: But he said, "Be sure and pay your taxes, whatever you do", and that is the tax receipts that I brought you gentlemen.

By Mr. von Holst:

4181

Q. Well, is this true, that Judge Davis was pushing you pretty hard to pay back this loan of his? A. Judge wants it as quick as possible.

Q. And was Mr. Kaufman not pushing you so hard? A. Well, I—I begged for mercy with Mr. Kaufman, to be as lenient with me as he could, that I haven't been able to pay it. I lost one crop, and the Government, keeping me up there twenty-one days, ploughed in oranges that the mules was walking clear up to the ankles in the oranges, the ground covered.

Q. Let me ask you this, did Judge Davis push you for repayment of his loan harder than Kaufman pushed you

4182 for repayment of his? A. Well, each gentleman has been very lenient with me, I can't help thanking them for that. They could have foreclosed on me or could have put me off the property, and they haven't done it.

Q. Well, will you answer this question, and if you can't answer it, say you cannot? A. All right.

Q. But don't try to answer me by making another statement, because we will never get through, Mr. Stokley. Is it a fact that Judge Davis pushed you for repayment of his four thousand dollar loan harder than Mr. Kaufman pushed you for payment on the principal and interest of his loan? A. I can't say that he has. I would say no. Each one of

them has pushed me equal. They want me to carry out my contract, which I can't do.

Q. But you did pay Judge Davis more than you have paid Kaufman? A. I did.

Mr. von Holst: I offer in evidence the check which the witness has identified, photostat of the check dated May 15, 1939, for $600.00, signed by Stokley, payable to the order of Morgan S. Kaufman, as Amici Exhibit 136.

(Photostatic copy of check dated May 15, 1939, from C. L. Stokley to the order of Morgan S. Kaufman, for $600.00, was marked Amici Exhibit 136.) 4184

By the Master:

Q. Are there no other checks? A. There is, Judge, I don't know where they are at, but there is one for four hundred, that my wife, made it out, and that is my scribbling there, and there is one for five hundred.

The Master: Have you the record of the bank account of Mr. Stokley to show checks drawn which might correspond with these checks?

(Discussion off the record.) 4185

By Mr. von Holst:

Q. Now, Mr. Stokley, you have produced here in obedience to the subpoena a number of tax certificates and tax statements, is that right? A. Yes, sir.

Q. Now, without going all through them, it is a fact, isn't it, that these tax delinquencies on the properties conveyed to Mr. Kaufman by the Town of Mount Vernon date back to 1935, is that right, some of them? A. No, not that far back.

Mr. Harris: '37 I think was the earliest one I saw.

The Witness: 1937 or '8. I paid them the first two years, I am quite sure, up to date.

By Mr. von Holst:

Q. Did you pay the county taxes in 1936 on that property? A. Yes, sir, have the State and county paid here up to date. This year's will be accumulated.

Q. Did you pay the 1937 taxes on the property deeded to Kaufman? A. Yes, I have the taxes up to——

Q. Now, did you pay them in 1937? A. I can't say.

4187 Q. Well, some of those show that in—— A. '37——

Q. Just a second, Mr. Stokley. In February of this year, February, 1942, you paid taxes that were delinquent since 1936, isn't that right? For instance, here——

(A paper was shown to the witness.)

A. Yes, some of this isn't Mr. Kaufman's holdings. The county gave me some of my own property that is free.

By Mr. von Holst:

Q. Well, this particular statement, number 76897R is on blocks 413, 420 and 421, that is, the west 180 feet of—— A. Well, that wouldn't be Kaufman's.

4188 Q. —350 feet of block 422 and section 31 township 1927. Isn't that Kaufman's? A. We can get that here.

(The witness produced a paper.)

By Mr. von Holst:

Q. Comparing this record, 76897, with the description of the properties that you have before you, which you brought, it appears that blocks 413, 420 and 421—— A. Is John W. Sawyer.

Q. —is John W. Sawyer, all right, and is not the property that was conveyed to Kaufman? A. No, sir, here is Kaufman (indicating).

Q. All right. Now, how about this one, number 76898, blocks 414 and 419, right here (indicating)? A. There we are (indicating).

Q. That is Kaufman, is it not? A. Yes, sir.

Q. And this sheet shows you that those taxes which you apparently paid on February 19, 1942, were deliaquent, some of them, since 1936? A. Yes, but you see, in '36 I paid up all taxes for Kaufman and sent them a receipt for it, with those school bonds, so this isn't correct, that is what I spent the twenty-seven hundred dollars for, was to pay up the delinquent taxes.

Q. Referring to this property described, that is, blocks 414 and 419, after you made that 1936 payment you didn't make any other payments on those taxes until 1942, did you? A. Yes, sir. 4190

Q. Is that right? A. That is correct.

Q. Did you ever receive any inquiry from Mr. Kaufman after you paid the taxes in 1936 asking if you had paid subsequent taxes, taxes for subsequent years? A. I received instructions from him to be sure and pay the taxes.

By the Master:

Q. From whom? A. From Mr. Kaufman.

Q. By letter? A. Yes, sir. 4191

Q. Have you those letters? A. No, I haven't.

By Mr. von Holst:

Q. When did he write you to pay these taxes? A. Well, I would say as the years have gone by, just this last February, he says, "Be sure and tend to your taxes."

Q. That is, February of 1942? A. Yes.

Q. And you did pay them in this year? A. Yes.

Q. Did he write you about them in the preceding years, before 1942? A. He did.

Q. Did Mr. Kaufman write you? A. Yes.

Q. You haven't got those letters? A. No, I turned everything that I had over to the Government, I haven't——

Q. Well, what about 1941, did he write you in 1941? A. He has kept in touch with me as the years go by to take care of my taxes.

The Master: Well, I don't think anything that happened as late as that would be material anyway, do you, Mr. von Holst?

Mr. von Holst: No, I think not.

4193 *By Mr. von Holst:*

Q. You referred in your testimony this morning to a mule kicking you. A. Yes.

Q. When did she do that? A. Two years ago. How did you know she was a she? That is what it was, a mule that I had raised.

Q. Well, a man wouldn't be that mean, would he? Two years ago? A. Very dangerous kick. I had a cowboy's hat on, gentlemen, and it cut clear through the leather band in the hat.

Q. And you have testified before the Grand Jury in New York before that accident, is that right, before the mule
4194 kicked you? A. It seems that I had, it has been, it seems like it has been about four years that that has been going on.

Mr. von Holst: That is all, direct examination closed.

Mr. Harris: No questions.

The Master: I would like to ask him two or three questions on points that didn't seem to me to be entirely cleared up.

By the Master:

Q. Did you say that you tried to get loans in Mount Dora before you applied to Judge Davis for help in 1934 or '5? A. The big loan for the paying lien?

4195

Q. Yes. A. Yes, Judge, I tried the bank, but there was none of the growers, as an ordinary thing a Florida orange grower has some money to lend, but we didn't have any money to lend each other.

Q. And what about the bank? A. The bank wouldn't lend me the money. They had all they could carry, was his answer to me.

Q. Did they think the security wasn't sufficient? A. No, sir, it wasn't that, but may I explain, our orange groves is quite a gamble, some years we make splendid on them, and then again if we get a serious cold, you can lose the whole crop. Now, since we have got juice plants, you can salvage the oranges, and get something out of it, but they haven't got a cash value like your property here.

4196

Q. I think you said there was nearly thirty thousand dollars in taxes or liens or claims of Mount Dora against that property? A. Yes, sir, and I paid eleven thousand before I went broke, and then I paid—then I got this loan through and settled it with ten thousand, which would have amounted to about twenty-eight thousand to thirty, I expect.

Q. Well, my question is, did the thirty thousand consist partly of taxes and partly of claims for paving, or something of that sort? A. The paving would have amounted to all of that.

4197

Q. All of it? A. Yes, they paved all of my farm property, all my grove and truck lands.

Q. You think none of it was for taxes, ordinary taxes? A. Well, the City, of course, forgave all the taxes which would have been against it, if I hadn't of made the compromise.

Q. Yes. Now, I think you said that when Judge Davis was going North, coming back from Miami in 1935, he told you that he thought he could get this money, or expected to get it, from Mr. Kaufman. A. I believe so. He first told me that he could get it, as I have stated, from a friend, or a client.

Q. Did he tell you how he knew that Mr. Kaufman would loan the money? A. No, sir.

Q. Did not? A. No.

Q. When you discussed this matter in Judge Davis's chambers you say you and Mr. Kaufman went into the library and Mr. Lord was sitting there reading a book? A. Yes.

Q. How was he drawn into it, into the matter? Did Mr. Kaufman ask him to come over and join you, or something? A. There was something said in regards to drawing up the
4199 contract, and Mr. Kaufman and myself were talking. He —it seems to me he asked him certain questions in regards to drafting the contract, or got in conversation with him.

Q. Well, did Mr. Kaufman—was he introduced to Mr. Lord by Judge Davis, or did he seem to know him? A. I couldn't say, he talked with him there, but I don't know where he——

Q. You don't know how he opened the subject with him? A. No, sir, I do not.

Q. Well, now, during the period from between October 25th, when you left Philadelphia, and the date——

Mr. von Holst: Trenton.

4200

By the Master:

Q. Or Trenton, I should say—and the date when this transaction was finally closed, you apparently had a number of communications from Judge Davis about the details of the transaction? A. Yes, sir.

Q. Did you have any correspondence with Mr. Kaufman during that period? A. Not until after I had secured the loan.

Q. After that you had correspondence with him? A. Yes, sir.

Q. To what effect? A. Well, I gave him the status of how the property was coming along, which I have as the years go by.

Q. And did he write you? Did he ask you to pay the taxes on February 20th? A. He said, tend to my obligations, and gave me an order for some oranges to be sent his mother and someone else, and sent me a check for them.

Q. Well, did you get any communication from him about February 20th, when you were supposed to pay the taxes, the county taxes on this property? A. I don't believe that I have.

4202

The Master: I think that is all.

Mr. von Hölst: I have got one more question that my associates suggest I ought to ask.

By Mr. von Holst:

Q. Mr. Stokley, as of this year, February of this year, it is true that the city taxes were delinquent, were they not, —— A. Yes.

Q. —on the Kaufman property? A. Yes.

Q. How far back? A. Possibly '38, possibly.

Mr. von Holst: That is all.

4203

The Witness: May I state why I have left them go that long?

Mr. von Holst: Certainly.

The Witness: We citizens are taxed to death, everywhere we turn is tax, and the ones that aren't keeping up the property good can settle it at about twenty-five cents on the dollar, and I have mine in a high state of cultivation and I am holding back, hoping to get in with the swim and pay them for about fifty cents on the dollar.

The Master: Well, Wednesday morning at ten o'clock.

4204 *Colloquy*

(Discussion off the record.)

Mr. Harris: Mr. Master, as I understand, Mr. Thiess and Mr. von Holst and their associates have now completed the testimony from which they hope to argue that our client, the Universal Oil Products Company, is involved or might be said to be involved in the subject of this controversy. Now, if I am wrong I want to be corrected right now.

Mr. Thiess: I think you are wrong.

Mr. Harris: Well, will you please inform us as to
4205 what further testimony is to be taken on that subject? Miss Asselin?

Mr. Thiess: And we have some other witnesses we expect to call.

Mr. Harris: You don't mind telling us, do you?

Mr. Thiess: Well, we expect to call Dr. Rittman, possibly.

Mr. Harris: Who is he? Oh, my old friend, Dr. Rittman?

Mr. Thiess: Right.

Mr. Harris: The refining man?

Mr. Thiess: Right.

Mr. Harris: Oh, yes, he is a physicist and a re-
4206 finery engineer.

Mr. Thiess: Refining specialist.

Mr. Harris: I have had a great deal of pleasure in cross-examining him in the past.

Mr. Thiess: So I understand. And we expect to call a Mr. Prevost. He is an attorney in Washington. At present he is in the Navy. We will have to subpoena him. We haven't subpoenaed him as yet.

Mr. Harris: Well, are those——

Mr. Thiess: And there is another question I think it would be well to discuss at the present time.

Mr. Harris: Those are not in the list of witnesses that you have given us?

4207

Mr. Thiess: No, because we haven't subpoenaed them yet, and Dr. Rittman we won't have to subpoena.

Now, then, there is this other question, there is the question of Judge Buffington and Judge Thompson. Both of those gentlemen, I think we all agree, are rather infirm, and their memories are bad, and we don't think—we are of the impression that if they were called they wouldn't recollect the circumstances, from what we have seen of Judge Buffington and what we know of Judge Thompson. Now, the question arises as to whether the Master believes that we should call these two Judges.

4208

The Master: Well, I think that is a matter for you to decide. They did testify before, and no doubt they would again, if they were called.

Mr. von Holst: Judge Buffington testified. I don't think Judge Thompson did.

Mr. Thiess: Judge Thompson never did testify.

The Master: I think Judge Thompson is not in a good condition physically,——

Mr. Thiess: No.

The Master: —from what I understand.

Mr. Thiess: That is what I understood.

4209

Mr. Harris: Well, just before we get off the subject of my inquiry, before you get to that subject, then, perhaps the remarks I propose to make are premature, but it seemed to me that so far as these bank tellers and Mr. Fox, and witnesses of that sort are concerned, there has not as yet been in this case enough to warrant making any further claim that the Universal Oil Products Company, or any of its attorneys or agents, were sufficiently involved in any wrongdoing which may be attributed either to Judge Davis or to Mr. Kaufman to justify holding us any

longer. If there are other witnesses by whom it is sought to connect our clients with any such wrongdoing or attempted wrongdoing, then I will withhold my remarks until that time. I cannot understand what Dr. Rittman will have to do with it, because Dr. Rittman's testimony will be technical, will it not?

Mr. Thiess: No, his testimony will not be technical. He was present at the argument before the Court of Appeals and his testimony will have to do with that.

Mr. Harris: Well, of course, I haven't the slightest idea what he will testify to, unless you want to tell us, give us some inkling. Is it proposed that he will testify as to some impropriety on the part——

Mr. Thiess: No, just what occurred at the argument, that is all.

Mr. Harris: Well, I certainly don't see how that is going to connect my client with the controversy. So what witnesses are there left who can connect our client with the subject of this inquiry? It has been an onerous thing, Your Honor, and it seems to me that after all these months, years, almost, now, the gentlemen on the other side of the table have failed to establish anything which would justify you or any court in drawing any conclusion that our client has been guilty of unclean hands or in any wise been involved in any judicial impropriety, and if that is so—and I am not suggesting that you take action on it today, I am only suggesting that the time seems rapidly to be approaching when I think Your Honor ought to dismiss us with your blessings, and I would like for the Master to be thinking about it. I am not asking you for any determination today, but it seems to me that if no better case can be made than has been presented to date against us—and I hold no brief for Judge Davis or Mr. Kaufman, I disassociate myself

and my associates and my clients from them in all respects, so far as any intimacy or impropriety may be concerned—but it seems to me that if no better case can be made than has been made, that counsel on the other side of the table should advise us and advise Your Honor, frankly, that they have not been able to secure anything which would justify holding us any further, and we can be sent with our blessings.

Otherwise, I wish to have counsel take note of this, I think I am going to present a petition under the rule which is applicable in the Federal Court that any further proceedings hereafter will subject 4214
counsel on the other side to costs, not only ordinary costs, but in those cases where the charges are groundless, and it has been held in Federal equity cases to that effect, we would be entitled to collect also as costs, costs as between solicitor and client, which in effect means the bills of Senator O'Mara, myself and others.

I only say that because if no better case than this can be made, I do feel that further proceedings so far as we are concerned are groundless. I am not asking for any determination today, but I do think that it would be the fair thing to us for the Master to indicate at some future date if he feels he can do so 4215
whether or not we should be further detained.

The Master: Well, I will be very glad to think it over.

Mr. Harris: All right, sir. Well, are we meeting at ten o'clock Wednesday?

The Master: Ten o'clock Wednesday.

(Adjourned until Wednesday, November 4th, 1942, at ten o'clock A. M., Eastern War Time.)

4216 **Transcript of Hearing, November 4, 1942**

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Wednesday, November 4, 1942, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., *Master.*

J. BERNHARD THIESS, Esq., (77 West Washington Street, Chicago, Illinois).

4217 THORLEY VON HOLST, Esq., (77 West Washington Street, Chicago, Illinois).,

Amici Curiae.

ROBERT W. POORE, Esq., (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq., (77 West Washington Street, Chicago, Illinois).

Counsel accompanying *Amici Curiae.*

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq., (100 Broadway, New York, N. Y.).

EDWARD J. O'MARA, Esq., (15 Exchange Place, Jersey 4218 City, New Jersey).

Representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued)

WILLIAM ELMER BROWN, JR., having been duly sworn, was examined and testified as follows:

Direct Examination:

Mr. Harris: Now, Your Honor, before this examination starts, may I again say that I protest

against any testimony relating to the Fox transaction so far as my client is concerned. I will try not to interrupt, but disassociate myself from any of this testimony.

The Master: Well, I understand that your rights will be preserved against any of this testimony.

By Mr. von Holst:

Q. Please state your name. A. William Elmer Brown, Jr.

Q. Your residence? A. Atlantic City—my residence is 4220
Ventnor City; I practice in Atlantic City.

Q. Ventnor City is a suburb of Atlantic City; is it? A. That is right.

By the Master:

Q. Are you a lawyer, Mr. Brown? A. Yes, I am.

Q. At Atlantic City, practice in Atlantic City? A. Yes.

Q. And how long have you practiced law? A. Over thirty years.

Q. Were you retained in any capacity in the so-called Fox bankruptcy case in Atlantic City? A. Yes, I was.

Mr. von Holst: I would like to offer in evidence 4221
the Circuit Court of Appeals docket entries. What I have here are photostats of the certified copies of the docket entries, and I will offer these seriatim.

Mr. Harris: Are you offering all of them?

Mr. von Holst: In the five cases.

Mr. Harris: What five cases are those?

Mr. von Holst: Well, that will develop in the testimony that the witness will adduce, that there were five cases, Mr. Harris, that ultimately found their way out of the Fox bankruptcy matters——

Mr. Harris: Oh, I see.

4222 *Colloquy*

Mr. von Holst: —to the Court of Appeals.

Mr. Harris: They all arose out of the Fox bankruptcy?

Mr. von Holst: That is right.

Mr. Harris: All right.

Mr. von Holst: I offer in evidence as Amici Exhibit 137 docket entries in case number 6253, All Continent Corporation versus Hiram Steelman, Trustee in Bankruptcy of William Fox, bankrupt.

(Photostatic copy of certified copy of docket
4223 entries in the case of All Continent Corporation, Appellant vs. Hiram Steelman Trustee in Bankruptcy of William Fox, bankrupt, Appellee, No. 6253, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 137.)

Mr. von Holst: I offer in evidence as Amici Exhibit 138 similar entries for the case of 6260, All Continent versus Hiram Steelman, as Amici Exhibit 138.

(Photostatic copy of certified copy of docket entries in the case of All Continent Corporation
4224 and Eva Fox, Appellants vs. Hiram Steelman, Trustee in Bankruptcy of William Fox, bankrupt, Appellee, No. 6260, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 138.)

Mr. von Holst: I offer in evidence the docket entries in case 6472, Eva Fox versus the Capital Company, et al., as Amici Exhibit 139.

(Photostatic copy of certified copy of docket entries in the case of Eva Fox, Appellant vs. Capital Company, Chicago Title & Trust Company,

Hiram Steelman, Trustee in Bankruptcy for William Fox, Appellees, No. 6472, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 139.)

Mr. von Holst: I offer in evidence the docket entries in Leitstein versus Capital Company, case No. 6473, as Amici Exhibit 140.

(Photostatic copy of certified copy of docket entries in the case of Herbert Leitstein, Appellant vs. Capital Company and Chicago Title & Trust Company, Appellees, No. 6473, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 140.) 4226

Mr. von Holst: I offer in evidence the docket entries in Hirsh, Newman, Reass and Becker versus the Capital Company, et al., case No. 6605, as Amici Exhibit 141.

(Photostatic copy of certified copy of docket entries in the case of Hirsh, Newman, Reass & Becker, Petitioners vs. Capital Company and George Frankenthaler, as receiver in Supplementary proceedings of William Fox, as judgment debtor, in proceedings entitled "Capital Company a California corporation vs. William Fox," Respondents, No. 6605, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 141.) 4227

Mr. von Holst: I also offer in evidence at this time the photostat of a certified copy of the order of reference to Robert E. Steedle in the matter of William Fox, bankrupt, as Amici Exhibit 142.

(Photostatic copy of certified copy of order of reference filed May 29, 1936, to Robert E. Steedle,

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in the matter of William Fox, bankrupt, in the District Court of the United States for the District of New Jersey, was marked Amici Exhibit 142.)

By Mr. von Holst:

Q. In what capacity were you retained in the Fox bankruptcy matter? A. As attorney for Hiram Steelman, who was trustee for the bankrupt.

Q. When was he appointed? A. On June 25, 1936.

Q. And when were you appointed as attorney for the trus-
4229 tee? A. Same day.

Q. What were the first proceedings that occurred in the Fox bankruptcy matter? A. They were a series of hearings pursuant to what we refer to as Section 21A of the Bankruptcy Act, which were had on petition of two creditors, Capital Company and Chicago Title and Trust Company.

Q. Did you attend those 21A hearings? A. Yes, I did.

Mr. von Holst: Is it desirable that the witness should explain briefly what 21A hearings are?

Mr. Harris: I think we all know.

Mr. von Holst: I suppose it is all fully known to us. It is a matter of law.

4230

The Master: I don't think it is necessary now, unless you want something on the record about it.

By Mr. von Holst:

Q. Well, can you state very briefly, just for the record, what the nature of these hearings is? A. Well, the nature is very much described by the customary and usual purpose, that it is an investigation into the transactions and affairs of the bankrupt, in search for assets.

Q. As a result of attending these hearings, what course did you and Steelman pursue? A. Merely as spectators to

glean whatever information we could from the developments of those hearings.

Q. And as a result of gleaning that information did you file any proceeding? A. Yes.

Q. And please state what it was. A. On behalf of the trustee I prepared and filed a petition with the Referee asking that All Continent Corporation be compelled to, or directed to turn over to the trustee all of its books of account and records, for examination and audit by him.

Q. What was this All Continent Corporation? A. All Continent Corporation was a corporation formed by the bankrupt several years prior to his bankruptcy, to which it 4232
developed during these hearings he had transferred a considerable amount of property and assets that were one time his.

Q. And what action was taken on the petition by the Referee?

Mr. Harris: Just a minute, before you say that, who owned the stock of the All Continent Corporation? Did the bankrupt own that, or was it in the name of someone else?

The Witness: The stock of the All Continent Corporation was originally issued to William Fox, who claimed that it was the subject of a trust agreement 4233
whereby he had transferred the stock to his wife in trust for herself and his two daughters, and ultimately his grandchildren.

By Mr. Harris:

Q. Sometime before his bankruptcy, some years before? A. But, in fact, the stock had never been transferred out of William Fox's name on the books of the corporation.

Q. Well, was that claimed to have been done some years before? A. It was claimed to have been done shortly after the formation of the corporation.

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Q. At a time when it was not claimed that he was insolvent? A. It wasn't, to my knowledge, it wasn't claimed then. It became apparent, according to our deductions from the proofs that came out in the hearings, that he was insolvent at the time.

Q. At the time—— A. And we so alleged —

Q. At the time, it was claimed,—— A. At the time of the trust.

Q. —that the trust agreement—— A. Yes.

Q. —was executed? So, in effect, you claim that this was an unlawful transfer, if a transfer was made, and if no
4235 transfer was made, then the stock was the asset of the bankrupt estate? A. No, we claimed by ultimate proceedings filed in the recapture suit that he had actually transferred that stock in fraud of his creditors.

Q. That is what I mean.

The Master: I thought you said it was not actually transferred.

The Witness: Not on the books of the company.

Mr. Harris: But by this agreement?—

The Witness: There was proof that it had been the subject of a trust indenture.

The Master: Trust indenture?

4236 The Witness: In which his wife was named as the trustee.

By Mr. Harris:

Q. And the beneficiary? And one of the beneficiaries? A. And one of the beneficiaries under the trust indenture, but as to the actual transfer or delivery of the certificates of stock, I am not able to, at this time, state whether or not that was done.

(Discussion off the record.)

The Master: You may proceed with your examination, Mr. von Holst.

By Mr. von Holst:

Q. What action did the Referee take on your petition? A. After a hearing, he entered an order directing All Continent Corporation to turn over the books for the purpose I stated. That order was entered on August 25, 1936.

Mr. Harris: May I just ask a question to elucidate at this time?

By Mr. Harris:

Q. Was that on the theory that there had been no transfer 4238
of the stock of All Continent, or, if there were a transfer by virtue of this trust agreement, that it was in fraud of creditors? A. No, the theory upon which the order was made was that the testimony adduced up to that date in the 21A hearings had indicated that—as I recall it—upwards of thirteen millions of dollars that had gone through All Continent Corporation, according to its books and records, upwards of twelve million dollars of that sum had actually been disbursed, either to Fox or for his benefit, and that because of the volume of the transactions, as was disclosed, that had occurred between All Continent Corporation and the bankrupt, there was indication that the All Continent Corporation and the bankrupt were one and the same. This was not an 4239
order to turn over the books and records as the books and records of the bankrupt, it was an order to turn the books and records open for audit and examination in connection with the 21A examinations.

Q. Well, I don't understand, I should have doubted if the bankruptcy court had authority to do that, unless it found that the assets belonged to the bankrupt. A. I think you will find there is authority for it.

Q. But, at least, it was a contested question, wasn't it? A. Well, at least, the United States Supreme Court thought well enough of it to grant a certiorari on it, on our appeal.

Q. I mean, it was contested, wasn't it? A. Oh, yes, it was contested.

By the Master:

Q. Was it ultimately decided by the Supreme Court that you were right in the matter? A. There was no decision on that, as I think will develop.

Q. Yes.

Mr. von Holst: We propose to trace all these proceedings through.

4241

Mr. Harris: I do think, though, it is important, as bearing on this issue, even though I don't think it has a thing to do with my client, to show that there was a question to be litigated, and that people might differ on the conclusion.

By Mr. von Holst:

Q. This order by Referee Steedle on your petition to turn over the books to the trustee for audit and examination appears in the Court of Appeals Record, Appeal Number 6260, at page 52, does it not? A. Well, it appears in the record.

4242

Mr. von Holst: I might say, if the Master please, that these C. C. A. records are, of course, lodged in this court, in the Court of Appeals here, and we thought that by making reference to the page number of those records it would be an easy way, if there was any desire to verify or check on dates of these orders, and would avoid the necessity of putting in voluminous certified copies of petitions, and so forth.

The Master: That is right, I think so.

Mr. von Holst: And make a smaller record.

The Master: They are records of the court under which this investigation is being conducted.

Mr. von Holst: That is my point.

The Witness: It is on page 52 of the printed transcript of record.

By Mr. von Holst:

Q. In case 6260? A. That is correct.

Q. Appeal 6260? A. That is correct.

Mr. Harris: What was that, that was on that page?

Mr. von Holst: The order of the Referee,——

Mr. Harris: Oh, yes.

Mr. von Holst: —on the petition. 4244

By the Master:

Q. The petition was for the examination of the books, was it, of the All Continent Corporation? A. For the surrender of the books——

Q. Surrender of the books? A. —to the trustee for his examination and audit.

Q. Very good.

By Mr. von Holst:

Q. Now, what action was taken by the District Court on the Referee's order? A. The District Court allowed or granted leave to review the Referee's order—no, the Referee granted leave to review—I am sorry—the Referee granted review of that order. 4245

Q. To the District Court? A. That is correct.

Q. And what Judge was sitting? A. The Honorable John Boyd Avis.

Q. And what action did the District Court take on this review? A. Well, the first action which the District Court took was to grant an application for a stay of the operation of the execution of the order.

Q. Yes, will you proceed? A. And in that order a day was fixed for a hearing. The hearing was subsequently had, and it resulted in an order made by Judge Avis on October 9, 1936, whereby he affirmed the Referee's order, with slight modification as to terms of surrender.

Q. And that affirmation by District Judge Avis appears at page 79 of the appeal record in case 6260? A. That is correct.

Q. Now, before October 9, 1936 was any other proceeding begun? A. Yes.

Q. Will you state what it was? A. On or about September 8, 1936 All Continent Corporation instituted a suit by bill of complaint filed in the United States District Court for the Eastern District of Pennsylvania against J. W. Sparks and Company, brokers doing business in this city, Capital Company, a California Corporation,——

By Mr. Harris:

Q. That is Greenfield's company? No, no,—— A. No, —Capital Company, a California Corporation, one of the principal creditors in the Fox bankruptcy matter, and Hiram Steelman, the trustee of the bankrupt. That suit was instituted under what was referred to as Section 57 of the U. S. Code, whereby it asked that the title to certain securities then in the hands of the broker, Sparks and Company, having been placed there by All Continent Corporation, might be quieted by the removal of alleged clouds that had arisen as a result of claims made by Capital Company and Hiram Steelman, trustee, it being alleged that Capital Company had made claim to those assets by reason of supplementary proceedings had in the Southern District of New York on a judgment it had obtained there against Fox, in connection with which they had issued subpoenaes, under your practice in New York, which carried with it an alleged statutory restraint, that the person to whom the subpoena was directed

should not dispose of any assets in his possession which were or might be the property of William Fox.

It was alleged that Hiram Steelman had participated in creating the cloud on the title of these stocks by reason of the fact, as stated in the bill, that he had participated in a proceeding had before Judge Avis in the New Jersey District at the behest of the Capital Company to continue the examinations and to modify a previous restraint against those examinations, so far as the bankrupt was concerned, by allowing them to proceed with the examination of certain witnesses.

4250

By Mr. von Holst:

Q. Now, that bill of complaint in the Eastern District suit appears in Appeal record 6253 at page 37, does it not?

The Master: What number was that?

Mr. von Holst: 6253.

Mr. Harris: 6253 is not the suit in the Eastern District of Pennsylvania——

Mr. von Holst: No, sir.——

Mr. Harris: —that the witness has referred to.

Mr. von Holst: —I am merely trying to point to a place where the bill that was filed appears in these records, and you see, as will subsequently develop, 4251
those pleadings were incorporated into another proceeding, in 6253.

Mr. Harris: Well, I don't know what 6253 is.

The Master: It is the first one that was offered.

Mr. Harris: Yes, I mean, I don't know what that proceeding was.

Mr. von Holst: We will come to it in just a moment.

Mr. Harris: It looks like a plenary action, from the title of it.

The Witness: What page was that?

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Mr. von Holst: Page 37. No, I am wrong in that, maybe—it is page 23.

The Witness: A copy of the bill does appear on page 23 of the printed transcript in the case No. 6253.

By the Master:

Q. That is the Court of Appeals number, is it? A. Yes.

Mr. Harris: In a different proceeding; in a different case.

The Master: 6253.

4253 Mr. Harris: That is a different case.

The Master: Yes.

Mr. Harris: It is not the Eastern District of Pennsylvania case.

The Master: No.

Mr. von Holst: The point is, Mr. Harris, that that Eastern District case never got to the Court of Appeals, so there is no Court of Appeals record for that case, but the proceedings in that case do appear in cases that did get to the Court of Appeals from the New Jersey court.

The Master: Yes, I understood that.

4254 Mr. Harris: I understood that, but it was not the bankruptcy proceeding in which these appeared, this was some plenary action, was it not? 6253 appears to be a suit by All Continent against Steelman as trustee, rather than a bankruptcy proceeding.

Mr. von Holst: We will develop that, if we may.

By Mr. von Holst:

Q. Now, after the filing of this suit in the Eastern District of Pennsylvania—first, let me ask, were the papers in that suit served upon you? A. Yes.

Q. When? A. My recollection is, it was September 9, 1936.

Q. And after service of these papers upon you what action did you take? A. About ten days after that I presented a petition to Judge Avis, of the New Jersey District Court, asking that All Continent Corporation be restrained from prosecuting this suit in the Eastern District of Pennsylvania as against the trustee in bankruptcy, Hiram Steelman.

By Mr. Harris:

Q. And that petition was a petition in a plenary action for an injunction, which you started? A. It wasn't a plenary—it was a petition filed in the bankruptcy proceeding. 4256

Q. Before the Referee? A. No, before Judge Avis, of the District Court, who presides over that court.

Q. I don't know anything about bankruptcy, but I don't understand how he got jurisdiction.

The Master: He had jurisdiction of the bankruptcy proceedings.

Mr. Harris: No, the jurisdiction in a bankruptcy proceeding was before the Referee.

The Witness: Well, I understand the 1938 Bankruptcy Act had not yet been passed, which made the Referee the court.

Mr. Harris: Well, from my meagre practice in the past in bankruptcy, I thought except for plenary actions all proceedings started before the Referee. Am I mistaken in that? 4257

The Witness: I had always understood, Mr. Harris, that the Referee prior to the 1938 Act acted only pursuant to his reference,——

Mr. Harris: I see.

The Witness: —and that the Court, the bankruptcy court, was in reality the judges of the District Court——

Mr. Harris: I see.

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The Witness: —of the district in which it was filed, but by the 1938 Act, the Referee and the judges are the court.

Mr. Harris: I see. I was just wondering, as a matter of curiosity.

By Mr. von Holst:

Q. Now, Mr. Brown, this petition to restrain the further prosecution of the Eastern District of Pennsylvania suit against the trustee became in the Court of Appeals case
4259 number 6253, did it not? A. That is correct.

Q. And the petition which you have just referred to appears on page 3 of that transcript, 6253, does it not? A. Yes. I might explain, Mr. von Holst, that the record of that case as it appeared in the Circuit Court of Appeals consisted of a printed book called the transcript of record, and a subsequent printed book called supplemental record.

Q. Yes. A. It all constituted the one record.

Q. Now, what action did Judge Avis take on your petition to restrain further prosecution of the Eastern District of Pennsylvania suit against the trustee? A. Well, after a hearing had before him, at which the arguments for the par-
4260 ties were presented, he made an order on October 7, 1936, restraining All Continent Corporation from prosecuting that suit against the trustee.

By Mr. Harris:

Q. On what date? What date? A. October 7.

Q. I thought you said November 7, I misunderstood you.

By Mr. von Holst:

Q. And that order appears at page 44 of the Appeal record, 6253? A. Yes, it does.

William Elmer Brown, Jr.—For Amici Curiae—Direct 4261

Q. Now, prior to the entry of Judge Avis's order on October 7, 1936, had the All Continent moved with respect to Steelman's petition to restrain the further prosecution of the Eastern District suit? A. Yes, on the day of the hearing before Judge Avis they made a motion pursuant to notice to dismiss the petition which I had filed in behalf of the trustee for restraint, on the ground, in substance, that the Court had no power to restrain the Eastern District. That motion was denied, as will appear by Judge Avis's opinion in the record.

By Mr. Harris: 4262

Q. What date was that denied, before or after the restraining order was entered? A. There was no order, as I recall it, denying the motion, but it was disposed of in his memorandum filed, which appears on page 41 of the record of 6253.

The Master: Well, if he made the restraining order he must have——

Mr. Harris: Well, I didn't know which came on first. I thought possibly one came on before the other. I don't see how he could grant one without denying the other. 4263

Mr. von Holst: Now, if the Master please, we may, in order to keep these cases separate, refer to 6260 as the "turn over the books case", and the case 6253 as the "restraint case", just as a convenient method, rather than to keep on repeating these numbers. Anyhow, one gets mixed up with numbers.

Mr. Harris: Restraint of trade case?

Mr. von Holst: No, if was just a restraint case. We will call it that just for convenience.

The Master: Very well.

4264 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Now, then, going back, then, to the "turn over the books case," 6260, what action was next taken? A. An appeal was taken to the Circuit Court of Appeals, first by order of Judge Avis of the District Court, and subsequently by order of the Circuit Court of Appeals.

Q. Now, Judge Avis's order was entered October 15, was it? A. I think that was correct.

Q. 1936; and appears at page 83, case 6260? A. No, that is the petition.

4265 Q. Oh, that is All Continent's petition for appeal? A. Yes.

Q. And the order—I am sorry I confused you,—— A. The order is on page 87.

Q. Page 87, and bears the same date, does it not, October 15th? A. That is correct.

By the Master:

Q. Was this an appeal from the order to turn over the books? A. Yes.

By Mr. Harris:

Q. Now, as I understand it, Mr. Brown, there is nothing 4266 unusual in getting the appeal allowed both by the District Court and by the Circuit Court of Appeals, is there? Wasn't that customary, because of some question of jurisdiction under the old Act? A. There was some question as to whether or not it was a proceeding in bankruptcy or an action in equity, and in one event they had to go by way of an order of the District Court, and the other way, by order of the Circuit Court of Appeals, and to make it sure, they went both ways. I think that was the situation.

By Mr. von Holst:

Q. But Judge Avis's order allowing the appeal was to operate as a supersedeas, was it not? A. Yes.

William Elmer Brown, Jr.—For Amici Curiae—Direct 4267

Q. It so provided? A. Yes.

Q. And the citation of appeal in the District Court of New Jersey in the "turn over the books case," 6260, was filed on October 27th, as appears from page 89 of the transcript in 6260? A. That is correct.

Q. And still referring to that transcript 6260, on October 28th the All Continent filed notice of motion for allowance of appeal in the Circuit Court of Appeals? A. Yes, which appears on page 91 of the printed record, and the petition to the United States Circuit Court of Appeals appears on page 92.

4268

Q. And what order was entered by the Court of Appeals on the petition for appeal there? Or, let me put it this way, was an order entered and signed by Judge Buffington on November 4 granting the leave to appeal, and allowing a supersedeas? A. Yes.

Q. And that appears at page 97 of record 6260?

By the Master:

Q. What case was that? A. This was the "turn over the books case."

Mr. Thiess: "Turn over the books case."

The Witness: That order does appear on page 97, and when I say that it was the order allowing the appeal and granting a supersedeas, the order is in the form merely that the motion is in all respects granted, but the petition which was filed prayed for leave to appeal and that the appeal operate as a supersedeas, so that the effect of the order was just what was included in your question. 4269

By Mr. von Holst:

Q. Now, may I turn back to the "restraint case," record 6253, that is, the order restraining the further prosecution

4270 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

of the Eastern District of Pennsylvania suit against the trustee? Judge Avis entered an order in that case allowing an appeal on October 20th, returnable thirty days thereafter, as appears from page 48 of the transcript in 6253? A. The order allowing the appeal does appear at that place in the record. However, the order was not returnable thirty days thereafter, it was the citation which issued on that order, as a result of that order, which was returnable in that period of time.

Q. And in this same "restraint case," when was the application for appeal made? A. To the Circuit Court of
4271 Appeals?

Q. Yes. A. That application was made on November 2nd, 1936. That was the day on which the application in both cases, the "turn over the books" and the "restraint case" was made.

Q. And in the "restraint case" was there an application made at the same time to file a supplemental record? A. Yes.

Q. Will you explain that? A. After the order had been made by Judge Avis, which was there, in the Court of Appeals, on appeal, there came into being three pleadings which All Continent Corporation asked they be permitted to in-
4272 clude as a part of the record of that case on appeal. Those three pleadings were the answer of J. W. Sparks and Company in the Eastern District suit, a bill of complaint which I had filed in behalf of the trustee in bankruptcy in the New Jersey Chancery Court for the purpose of recapturing assets, and the motion papers filed by Capital Company in the Eastern District suit, asking that that suit be dismissed as against it.

As a result of the motion which was made to the Circuit Court of Appeals, I opposed it on the ground that all of those papers came into being after Judge Avis's order had been made, and that they were not a part of the record on

which Judge Avis's order had been made, and that to include those papers now in the record on appeal would create an entirely new record to be considered in connection with the appeal.

Q. In your—— A. However, the Court made an order permitting them to file a supplemental record including those documents, reserving to me my right to object to it at the time of the main argument on the appeal.

Q. Now, you appeared in opposition to the motion to file a supplemental record, did you? A. Yes.

Q. You appeared before the Court of Appeals? A. Yes.

Q. Did you file any paper in support of your opposition? 4274
A. No, I had a rather lengthy affidavit there of the trustee, which I attempted to read to the Court, setting forth the facts on which I had based my reasons for opposing the application. The Court refused to permit me to read it, said they didn't propose to consider the merits of the application at that time, that they would permit them to file, or to include this supplemental record, and would reserve to me the right to object at the time of the main argument.

Q. Does the order of November 4th—was that it? A. Yes.

Q. —appear in the transcript of 6253? A. Yes, it is on page 51, which is the first page of the supplemental record. 4275

Q. Now, when was this suit filed by Steelman in the New Jersey Chancery Court? A. My recollection is it was either August 12 or 13 of 1936, it was either one of those two days.

Q. Well, does that appear on page 52 of the supplemental record in 6253? A. The bill of complaint, copy of the bill of complaint that I filed does appear on page 52, and the pages following.

Q. And the date of that bill of complaint is what? I think perhaps the verification is on page 124. A. I am looking for it—it was verified on October 13th, 1936, which verification appears on page 123.

Q. And is that the date when that chancery suit was filed, October 13? A. Yes, the order to show cause was issued on that day.

By Mr. Harris:

Q. You said August 13th,—— A. October.

Q. —earlier.

By Mr. von Hoist:

4277 Q. That is what I was coming to. I think, in your first answer, you said August. A. Oh, I didn't mean that, I meant October.

Q. It is October? A. I am sorry, if I said August, I meant October.

Mr. Harris: Yes.

By Mr. von Hoist:

Q. Does the order to show cause appear in the transcript of 6253? A. On page 124 of that record.

Q. Now, in this case number 6253 what happened on November 6, 1936? A. On that date a telephone call came
4278 to my office, while I was out to lunch, and I found a memorandum of it on my desk when I returned, advising that the case would be up before the Circuit Court of Appeals for argument on November 9th. November 6th was Friday, and November 9th was on Monday.

Q. From whom did this telephone call come? A. It came from Mr. Rowland, the Clerk of the Circuit Court of Appeals of the Third Circuit.

Q. Prior to that te, phone call had you received any notice of motion or any other indication that the case would be argued on the following Monday? A. No.

By the Master:

Q. You received the notice on Friday? A. Yes,—two days after the—two days after the order allowing the appeal was entered.

By Mr. von Holst:

Q. And before the expiration of the thirty-day return day provided by Judge Davis's citation on appeal—— A. Yes.

Q. —in that case? Now, at that time, on November 6th,—— 4280

Mr. Harris: Was that 6253, that you are talking about?

Mr. von Holst: Yes, sir.

The Witness: That is the Eastern District proceeding, restraint.

By Mr. von Holst:

Q. That is the proceedings before Judge Avis to restrain the further prosecution against the trustee of the Eastern District suit? A. That is correct.

Q. Is that right? By "Eastern District suit" we mean the—— A. Restrain. 4281

Q. —restraint that had been entered by the Pennsylvania District Court? A. By the New Jersey District Court.

Q. By the New Jersey District Court. Now, at that time, on November 6th, what matters in the Fox bankruptcy cases were pending before the Court of Appeals for the Third Circuit? A. Well, there was the appeal from the order of Judge Avis affirming the Referee's direction that the books of All Continent Corporation be turned over to the trustee for audit and examination, and there was the appeal from the

order of Judge Avis whereby the prosecution of the Eastern District suit was restrained.

Q. And that last is 6253, is that right? A. That is correct.

Q. And the first one that you mentioned, the "turn over the books" appeal, was 6260? A. That is correct.

Q. Now, were you served with any papers in 6253 before Monday, November 9th? A. Late on Saturday morning of November 7th I was served with the record and appellant's brief.

4283 Q. In what form was the record? A. It was in printed form, as filed.

By the Master:

Q. When did you say you were served with that? A. On Saturday, late on Saturday morning of November 7th, the day after I had received the telephone call from the Clerk.

Q. And the brief was printed? A. Yes.

The Master: It must have been good work on the part of the printer.

Mr. Harris: I notice that your briefs were typewritten, were they not?

4284 The Witness: Yes.

The Master: I beg your pardon.

Mr. Harris: Mr. Brown's briefs were typewritten. He didn't have as fast a printer, or quite as much time.

The Witness: That wasn't the reason.

By Mr. von Hoist:

Q. Now, did you appear before the Court of Appeals on November 9th? A. Yes, I did.

Q. And please state what you did and what transpired on that occasion. A. Well, when the case was called I an-

nounced to the Court that I was there totally unprepared, that the case appeared to have been advanced on the list of cases for argument without any motion having been made to advance it, to my knowledge, by any party interested in the cause, that the appeal had just been taken by the order of that Court but five days previous, that I had been served with the printed record and brief only two days previous to then, and that I saw no occasion for advancing it, and that certainly I could not argue it and present a brief as I was required to do by the rules without I had ample time or reasonable time to analyze the record, which consisted of 4286
141 pages, and the brief which consisted of approximately 50 pages. I was pleading and did plead for more time in which to prepare myself for the argument.

Judge Buffington, speaking for the Court, announced that the case had been put down for argument that day pursuant to a practice or policy of the Court to accelerate the hearings of bankruptcy appeals, so as not to impede or delay the speedy administration of bankruptcy affairs, that is, the affairs of the bankrupt estates, and that pursuant to that policy it was desired that it be disposed of promptly.

The result of the argument—my adversary opposed delay, he stated to the Court that I was well conversant with what the appeal was about, that I had been in personal 4287
touch with all the proceedings prior to coming to that Court, and that I should be able to argue it that day. The Court took a recess, and after they had retired for about ten minutes they returned, and Judge Buffington announced that they had conferred and had decided that that appeal would have to be determined and heard—or, would have to be heard that week, and that I might confer with my adversary as to the day when it should be heard.

I did not confer with my adversary, but announced to the Court at that time that if that was the ultimatum of the Court I would be there on Friday to argue it, that being

4288 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

the last day of that week which they would sit to hear arguments, so as to give me the most time possible.

Then that was ordered, and Mr. Reass, Benjamin Reass, attorney for All Continent, then arose and asked the Court to direct that I should serve a copy of my brief upon either his firm in New York or the Pennsylvania attorneys, who were Pepper, Bodine——

By the Master:

Q. —Stokes and Schoch? A. —Stokes and Schoch, in
4289 Philadelphia.

I explained in answer to that application that there were no funds in this bankrupt estate, there was no money with which I could employ any help in the preparation of these cases, nor was there any money with which I could pay for the printing of briefs. Furthermore, I explained to him that I was required—explained to the Court that I was required to be in the New Jersey Court of Chancery on the day following, which was Tuesday, to answer a motion which was being made in the recapture suit, which I have previously referred to in my testimony, that Wednesday, November 11th, was a holiday, that being Armistice day, and that if
4290 I was required to serve my brief either in New York or in Philadelphia on Thursday, November 12th, that would present additional handicaps and hardships, which was almost insurmountable so far as I was concerned.

However, Mr. Reass insisted upon it, and the Court directed that I should serve copy of my brief upon the attorneys, either in New York or in Philadelphia, on Thursday of that week, and they gave me permission to file my brief in typewritten form providing I furnished four copies, three copies for one of each—one copy for each of the Judges, and one copy for the Clerk.

I went home and——

By Mr. von Holst:

Q. Pardon me, just before you get to that, on that hearing of November 9th did you say to the Court anything about advancing the appeal in the "turn over the books case", 6260? A. I did not at that time make application to advance that case. I did call their attention to the fact that there was another case pending there on appeal which had come up by order of that Court, entered on the same day that they allowed the appeal in the restraint suit, and that if their policy was to advance hearings of argument on all appeals in bankruptcy matters that that, too, should have been ad- 4292
vanced, that there seemed to be no reason why this "restrain suit" should be advanced and the other one not.

Q. Did the Court make any observation on that point——
A. No.

Q. —that you made? A. No.

By Mr. Harris:

Q. And you didn't ask them to advance it, did you?

Mr. von Holst: Just a minute, we will come to that.

Mr. Harris: Well, he said he didn't, a moment ago. 4293

Mr. von Holst: That is right.

By Mr. von Holst:

Q. Now, following upon this hearing did you serve upon your opponent any motion in the "turn over the books case", 6260? A. On the same day, upon my return to the office, to my office, I prepared a notice which I served upon Cole and Cole, who were the Atlantic City attorneys for All Continent Corporation and Eva Fox, to the effect that I would move before the Circuit Court of Appeals on November 9th —November 13th, to advance that case for argument to an

early day, with the further prayer that they be required to serve the printed record and brief on me prior to the argument date which might be fixed, and on such short day as they might determine.

Q. On November 13th did you appear before the Court of Appeals? A. Yes.

Q. And was the motion to advance the "turn over the books case" first heard? A. Yes.

Q. Was your motion opposed? A. Yes.

Q. On what ground? A. It was opposed on the ground
4295 that the attorneys for All Continent Corporation, due to pressure of other matters, did not have time to prepare the record and their brief and get ready for that argument on any short day that the Court might fix, and that they, in effect, could only do it in the time which might be allotted by the usual procedure.

Q. What action did the Court take upon your motion to advance the "turn over the books case" and the opposition thereto? A. Took the motion under advisement.

Q. Did they make any order allowing your opponent time to answer? A. They permitted him to—yes, they permitted him to file an answer to my motion.

Q. And gave him until what time to do that? A. I do
4296 not recall that there was a definite day fixed, but that answer was filed within a few days thereafter.

Q. Now, on the same day, November 13th, was the appeal in 6253, the "restraint case" argued? A. Yes.

Q. Will you state what took place? A. First, the argument in behalf of the appellant was first heard. Then I was heard on my argument in opposition.

The argument consisted, of course, of a discussion of the facts and the law points involved, and in the course of my argument Judge Davis—he being one of the members of the Court sitting—interrupted and said that he had observed that my brief was in typewriting and that it was of con-

siderable length, and that he felt that it was a burden upon the Court to expect them to read typewritten briefs, and that it was particularly a burden upon Judge Buffington, whose eyesight was none too good, and I explained to Judge Davis that I had filed my brief in typewritten form because the Court had given me leave to do so just a few days previous and that it was done by reason of the fact that I had no funds available to pay for the printing of the brief.

Judge Buffington then remarked that he had observed that we had been conducting quite extensive 21A examinations, which were conducted at the behest of the creditors, 4298
and that they apparently had funds with which to conduct such an investigation, and that perhaps they would produce the funds with which to pay for the printing of the brief.

I explained to the Court that I was not in position to require the creditors to do that, nor did I feel I was in position to request that they do it, but that if the Court desired that I should do so I would be very glad to state to the creditors that it, the Court, requested that it be done, and that I had no doubt under such circumstances they might produce the funds to print the brief, and Judge Buffington admonished me not to do that because to do so would be embarrassing to the Court, so the matter was then dropped.

Q. Did the Court thereafter render a decision in appeal 4299
6253? A. Yes.

Q. And what was their action? A. The decision was rendered on December 1st, 1936, and it reversed Judge Avis's order of restraint.

Q. And the order of reversal was entered that same day, was it not? A. Yes.

Q. And the mandate went down immediately? A. I was so informed by the Clerk.

Q. And that, the opinion in that appeal, that reversal, appears in 86 Fed. Second 913, I believe? A. That sounds to me like the correct reference. I am not certain about it.

4300 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

Q. Well, we have checked that, and that is the citation.

Mr. Harris: All right.

By Mr. Harris:

Q. Who wrote that opinion? A. It was filed over the name of Judge Buffington.

Mr. Harris: According to this Exhibit 137, certified copy of the order reversing was not sent down until January 6th, 1937. It says, "Certified Copies of
4301 Order Reversing etc. to Hirsh Newman Reass & Becker".

Mr. Neuman: That means they ordered it on that day.

Mr. von Holst: That is the certified copy, apparently, that they ordered then.

Mr. Harris: Oh, I see.

The Witness: Well, that says, "Certified Copy of Order Reversing etc. to Hirsh, Newman, Reass & Becker".

Mr. Harris: Yes, that is right.

The Master: The order reversing appears——

Mr. Harris: There is nothing here showing when
4302 the mandate went down.

The Witness: I see none.

By Mr. Harris:

Q. You don't know? A. Not of my own knowledge.

By Mr. von Holst:

Q. Now, going back to your appearance before the Court of Appeals on November 9th, to which you have testified, what court sat that day? A. Judges Buffington, Davis and Thompson.

Q. And on your appearance before the Court on November 13th, what Court sat? A. The same Judges, Judges Buffington, Davis and Thompson.

Q. Now, then, coming to the date of December 1st, were you served with any papers in the Eastern District of Pennsylvania suit? A. No, on that day I was served with papers to remove the recapture suit pending in the New Jersey Court of Chancery to the United States District Court.

By Mr. Harris:

Q. For the District of New Jersey? A. That is correct. 4304
It was about four o'clock in the afternoon on that day I was served with those papers.

By Mr. von Holst:

Q. What happened on December 2nd? A. On the morning of December 2nd, 1936, I was served with a copy of an ancillary bill of complaint purported to have been filed in the United States District Court of the Eastern District of Pennsylvania in the suit pending there.

I was also served with a copy of an order which had been entered by Judge Welsh, of that Court, directing that an order to show cause issue, directed to Hiram Steelman, the 4305
trustee in bankruptcy, requiring that he show cause before that Court on December 11th why he should not be restrained from the prosecution of the recapture suit in the Court of Chancery, and that, also, that order contained a temporary restraint in the interim, before the hearing.

Q. Have you the papers—— A. There was also served upon me on that day and at the same time what purported to be an order to show cause, somewhat in the form of a writ of injunction, which was issued by the Clerk.

Q. Have you with you the papers that were served upon you on December 2nd? A. Yes.

4306 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

By the Master:

Q. How did they get service on Steelman? Where did he reside? A. Atlantic City.

By Mr. Harris:

Q. Had he appeared in the Eastern District suit, Mr. Brown? A. He had not. That is the copy of the ancillary bill. This is the copy of Judge Welsh's order, and this is the copy of the order to show cause. The pencil notations on there are mine, made at the time of service.

4307

Mr. von Holst: I should like to offer in evidence these two documents, entitled, respectively, "Rule to Show Cause" and "Order"; the Rule to Show Cause as Amici Exhibit 143—may I have that marked and then a photostat substituted, Mr. Brown?

The Witness: Yes.

Mr. von Holst: —and the Order as Amici Exhibit 144.

(Copy of Rule to Show Cause, in the matter of All Continent Corporation, Plaintiff, v. John S. Wynn, et al., Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, defendants, and All Continent Corporation, Plaintiff v. Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendant, in the District Court of the United States in and for the Eastern District of Pennsylvania, June Term, 1936, No. 9533, In Equity, was marked Amici Exhibit 143.)

4308

(Certified copy of Order in the matter of All Continent Corporation, Plaintiff, v. John S. Wynn, et al., Capital Company, and Hiram Steelman, Trustees of the Estate of William Fox, a

Bankrupt, Defendants, and All Continent Corporation, Plaintiff, v. Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendant, in the District Court of the United States in and for the Eastern District of Pennsylvania, June Term, 1936, No. 9533, In Equity, dated December 1st, 1936, was marked Amici Exhibit 144.)

By Mr. von Holst:

Q. Who made this service on you? A. Service was made 4310
by a young man by the name of Marks, who was employed in the office of Hirsh, Newman, Reass and Becker, attorneys in New York City, and William B. Hunter, an attorney in the office of Bourgeois and Coulomb, who were the Atlantic City attorneys for the party.

Q. You stated that Mr. Steelman had not entered his appearance in the Eastern District suit? A. That is correct.

Q. Had you advised with him on that point? A. Yes, I had.

Q. And what had you told him? A. I advised him not to appear or submit to the jurisdiction of the Eastern Dis- 4311
trict Court, it being my contention that that Court had no jurisdiction over him in the New Jersey district.

Q. Did you enter a special appearance in the Eastern District case to contest jurisdiction? A. A special appearance was entered in the Eastern District Court in behalf of the trustee in bankruptcy, through Pennsylvania counsel, C. Brewster Rhoads, of——

By the Master:

Q. Montgomery and McCracken? A. —Philadelphia, Montgomery and McCracken.

4312 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Did you receive from the Clerk of the Court of Appeals an opinion of the Court in the "restraint case"? A. I did, eventually, yes.

Q. When did you receive that? A. I received that on December 3rd, two days after the opinion was filed. I first learned of the filing of the opinion, however, as a result of a telephone call which I made to the Clerk on December 2nd, as a result of service of other papers upon me.

Q. As the result of the service upon you of these papers,
4313 Amici Exhibits 143 and 144? A. That is right.

Q. Now, I believe you testified—— A. They were served upon me on the morning of December 2nd. I don't know whether I said that or not.

Q. I think you so testified.

Mr. Harris: If you think this is jockeying for position, about fifteen years ago,—

Mr. von Holst: You want this on the record?—

Mr. Harris: Yes,—I had a case where we had twenty-six cases pending,—practically all of which involved jockeying for jurisdiction in various courts; I remember we had thirteen motions returnable one
4314 morning. It is nothing unusual.

By Mr. von Holst:

Q. I ask you whether the ink, the writing in ink appearing on Amici Exhibits 143 and 144 was on these papers at the time they were served on you. A. Yes, they are in the same condition as when served upon me.

Q. Now, I believe you stated that on December 1st, 1936 you were served with papers showing the motion of the All Continent Corporation in the New Jersey Chancery recapture suit to remove the action to the Federal District Court. Is that correct? A. That is right.

The Master: Of New Jersey?

Mr. von Holst: Of New Jersey.

By Mr. Harris:

Q. Judge Avis was the Judge of that Court, was he? A. Yes.

Q. Was Judge Avis the Judge of that court? A. He was a judge of the United States District Court.

Q. That is what I mean, yes. A. Not of the Chancery Court.

Q. No. 4316

By the Master:

Q. He was one of the Judges? A. That is right.

By Mr. von Holst:

Q. Well, he was the only one who sat in Atlantic City at that time, wasn't he? A. He didn't reside in Atlantic City, he is assigned to the South Jersey section of the District.

Q. That is what I thought.

Mr. O'Mara: At Camden.

4317

By Mr. Harris:

Q. At Camden? A. That is right.

By Mr. von Holst:

Q. Now, were you present in the New Jersey Chancery Court when this motion to remove the action to the New Jersey Federal District Court was presented? A. Yes, I was.

Q. Did you take part in the argument? A. No, I merely stated my position.

Q. And what did you state? A. That I was unable to participate in the argument on that motion by reason of the fact that the day after the notice of the application was served upon me I had been served with an order, an order to show cause, of the Eastern District of Pennsylvania, which restrained me from prosecuting that suit in chancery, or restrained my client, the trustee in bankruptcy, and that while I felt that the order was improper and illegal, I felt that I could not ignore it until it was disposed of, and that, therefore, I could not participate and that I would have to leave whatever argument there was to be presented in opposition
4319 to the application to remove to attorneys for creditors, who were there prepared to state the position.

Q. Now, this New Jersey Chancery suit was subsequently removed, was it not? A. Yes, it was.

Q. And the opinion of that Court appears in 121 New Jersey Equity 218? A. That is correct.

By the Master:

Q. There was diversity of citizenship, was there? A. Separability of causes and diversity of citizenship.

By Mr. Harris:

4320 Q. The All Continent Corporation was a Delaware Corporation? A. Yes.

Q. And Mr. Steelman was a resident of New Jersey? A. Yes, and Eva Fox and other parties——

Q. Resident of New York? A. —to the suit were residents of New York. There were two counts in the bill, one to recover assets from All Continent Corporation, and the other to recover assets from the individual members of the Fox family.

By Mr. von Holst:

Q. Now, did you appear in the Eastern District of Pennsylvania case on December 11th? A. Yes.

Q. And what occurred then? A. I had received a letter from Mr. Rowland, the Clerk of that Court, dated December 7th, delivered to me on December 8th, advising me that——

Q. May I interrupt? Were you referring now to the December 11th hearing, when you appeared before Judge Welsh? A. No, I am referring to the appearance before the C. C. A. Third, I thought you talked of them.

Q. No, I was asking you whether on December 11th you appeared before Judge Welsh—— A. I was——

Q. —in the Eastern District case. A. I was present in court. I did not participate in the hearing of that matter. That was handled by Mr. Rhoads, who was Philadelphia counsel for the trustee. 4322

Q. Did you hear, were you present when Judge Welsh stated his position? A. Yes.

Q. And what did he say? A. Mr. Rhoads had entered a special appearance to contest the jurisdiction of the Court to issue its restraint or to conduct any proceedings against the trustee in bankruptcy, he being a resident of New Jersey, also contesting the jurisdiction because of the fact that the bankruptcy court had first acquired jurisdiction.

There was some argument on the matter, and finally Judge Welsh announced that in view of the opinion of the Circuit Court of Appeals of the Third Circuit, which had 4323 just recently been filed—the one which was filed on December 1st—he felt that he was bound to issue the restraint and to enter a permanent injunction, because the Circuit Court of Appeals in its opinion had said—although outside the issue then before it—that they felt that the Eastern District Court did have the power and should restrain that action, on proper application.

Mr. Harris: I don't see why you say it is outside of the issue.

The Witness: Because the only issue, the only issue in that cause was whether or not the bankruptcy court,

presided over by Judge Avis, had the power to restrain the prosecution of the Eastern District suit.

Mr. Harris: Yes, and the C. C. A.——

The Witness: There was no question, there was no question in that appeal before the Circuit Court of Appeals as to whether or not the Eastern District suit could restrain the trustee from the prosecution of the Chancery action.

By the Master:

4325 Q. The recapture case? A. The recapture case wasn't there at all.

Mr. Harris: No, it wasn't the recapture case, but the Eastern District was taking jurisdiction——.

The Witness: Yes, but the Eastern District Court had issued a restraint against the trustee prosecuting the recapture suit in the Chancery Court of New Jersey, and that was not in issue before the Circuit Court of Appeals in the Third Circuit.

Mr. Harris: It seems to me one follows the other.

By Mr. von Holst:

4326 Q. Now, then, coming back to the New Jersey bankruptcy case, that is, the "restraint case", did you make any application to the Court of Appeals for a stay? A. I prepared a verified petition, order for stay, and an order to show cause why a stay should not be granted, and I went to Judge Buffington's chambers, I think it was on December 18th, and told him that I was there to apply for a stay of the operation of the reversing order of that Court, for a reasonable time, to permit us to file application with the United States Supreme Court for writ of certiorari to review that judgment.

After I had stated my position, Judge Buffington first inquired whether or not Mr. Steelman, the trustee in bank-

ruptcy, had filed an answer or entered an appearance in the Eastern District suit.

I said, no, he had not, and that I had advised him not to do so, that he had entered a special appearance to contest the jurisdiction of that Court. That is as far as his appearance went.

Then Judge Buffington announced to me that it was the general practice of that Court not to issue any order of affirmative relief without notice to the opposing side, and asked me if I had given notice of that application.

I said I had not. 4328

He said, "Well, then, we can't allow it."

I then said to Judge Buffington that I had anticipated that he might take that position and that I had only made the application in the way in which I had because of the shortness of time, and that I had with me an order to show cause directed to the opposing side, that they be required to appear on a short day to be fixed and show cause why the stay should not be granted.

And then Judge Buffington announced to me that that also could not be entered without notice, so I picked up the papers and went home without filing them.

Q. Did you thereafter apply to the Supreme Court for a 4329
stay and for writ of certiorari? A. Yes, we filed a petition for writ of certiorari and we also made, on the day that it was filed, we made an application to Justice Cardozo of the United States Supreme Court, in his chambers, for a stay of the operation of the C. C. A. reversing order, and the stay was granted.

Q. Was your petition granted for certiorari? A. The petition for certiorari was ultimately granted.

Q. And the Supreme Court filed its opinion? A. Yes.

Q. And what action did they take? A. They reversed the Circuit Court of Appeals of the Third Circuit and reinstated

4330 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

the order of the District Court restraining the Eastern District action.

Q. And that decision is reported in 301 United States 278. A. I think that is the correct citation.

By the Master:

Q. Your application to Judge Buffington was, as far as the stay, on account of your application to the Supreme Court for certiorari, I suppose. A. For a stay to permit us a sufficient length of time to permit us to prepare the
4331 necessary application and present it to the United States Supreme Court. Q. Yes, you hadn't stated the purpose, I think.

By Mr. von Hoist:

Q. Now, going back to this New Jersey Chancery case, I want to ask you whether any answer was filed by All Continent.

The Master: Which case was that, Mr. von Holst?

Mr. von Holst: The New Jersey Chancery suit.

The Master: Recapture?

4332 Mr. von Holst: The recapture suit.

A. It is my recollection that they did file an answer. I don't know the time, I don't know whether that was, now, at this late date, whether it was before or after the removal of the cause.

Mr. Harris: Well, I think it must have been after the removal. I don't believe you can remove a cause after answer is filed.

The Witness: I am quite certain you are correct, but——

By Mr. von Holst:

Q. Do you recall whether any extension of time was given to file that answer? A. Yes, the suit was started the middle of October, the subpoena to answer was served forthwith, and under our practice they had twenty days after service of the subpoena in which to answer, and they appeared, they made a motion before the Chancery Court in the latter part of the month of October asking for an extension of time within which to file their answer or take such action in the matter as they should decide, and the Court did grant an extension. It is my recollection that the time was extended to December 8th. 4334

Q. Now, turning back to the "turn over the books" appeal, 6260, did you hear from the Clerk, Mr. Rowland, as to when that appeal would be heard? A. Yes.

Q. When were you advised by him? A. I was advised by letter which I received on December 8th that it would be up for argument on December 11th.

Q. Now, had you heard at that time from the Court on your motion to advance that cause for hearing? A. That was the first information of any kind that I had had respecting that suit after I made my application to advance it.

Q. When you received this letter from Mr. Rowland on December 8th had you been served with a printed record? 4335
A. No.

Q. What action did you take? A. I immediately served a notice upon my opponents that I would appear before the Court on December 11th and move to dismiss that appeal for lack of prosecution, for failure to prosecute the appeal pursuant to the rules of the Court, by service of record and brief, and so forth.

Q. Prior to December 11th were you served with any papers by your opponent? A. Yes.

Q. When, and what? A. On December 10th I received a printer's galley proof of the record and the brief. That was not the finished printed book.

By Mr. Harris:

Q. Well, the text was finished, wasn't it? A. Oh, I didn't make the claim it was any different from the book as it was later filed, but I was served with only one copy of it. The rules require that I should be served with three.

By Mr. von Holst:

Q. Were you served with any further papers on the morning of December 11th? A. On the morning of December 11th, about—the Court was scheduled to open at ten,
4337 it was about twenty-five minutes of ten, I was served with the official printed copies of the brief of the appellant. About ten minutes before court opened I was served with the finished printed copies of the record.

Q. Now, did you appear before the Court of Appeals then, on December 11th? A. Yes.

Q. And you first presented a motion? A. I presented the motion for dismissal.

Q. What grounds did you urge? A. That the rules of procedure had not been complied with and that there had been a failure to prosecute that appeal according to the legal requirements.

4338 Q. Did you make any other motion? Did you move for more time? A. Oh, I stated to the Court on that day that I again was caught unprepared, and stated why, namely, that I had not been served with the printed record prior to December 10th, nor with the printed brief, explained to them that on just the day previous I had received the printer's galley proof of both those papers, that they were quite lengthy, and that I had not had an opportunity to analyze them nor to prepare my answer, my brief nor my argument, and that I was in somewhat the same position that I had been in just the previous month when I was there on the other appeal, and I did ask for more time, and the Court

permitted me to, or granted additional time until December 22nd.

Also, on that day my adversaries made a motion for leave to bring up to that Court the typewritten transcript of the 21A hearings testimony in lieu of printing it, the reason for that being that it was quite voluminous, that it consisted of about thirteen or fourteen hundred pages, and that it would be quite expensive to print it, and their estimate was it would cost them at least two thousand dollars.

I opposed that. I opposed it on the ground, first, that it was unusual; secondly, that if it was done in that way I would not be able to prepare my brief, as I was required by 4340
the rules, by pointing out the page and line where the testimony could be found in substantiation of the points that I might make in the brief or the argument that I might make, and I also called their attention to the fact that just the previous month, on the prior hearing, that the Court had complained because I had filed a typewritten brief of about forty-five or fifty pages in length, as being a rather arduous task placed upon the Court to read typewriting, and that it occurred to me that it would be a much more arduous task for them to read thirteen or fourteen hundred typewritten pages of testimony than it would to have read my brief.

However, after the argument they made an order directing that the bankruptcy court send that testimony to the 4341
Circuit Court of Appeals to be considered as a part of the record on appeal.

Q. At that hearing the Court took what action on your motion to dismiss the appeal? A. It made no pronouncement of decision on that at all, in effect, it took it under advisement.

By Mr. Harris:

Q. Well, in effect, by granting you an extension of the time within which to file a brief and argue, they denied it,

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didn't they? A. Well, I suppose you might say that. They didn't put it that way.

By Mr. von Holst:

Q. How long was the printed record, exclusive of the typewritten matter? A. Ninety-seven pages. The brief, appellant's brief, was fifty-three pages.

Q. Now, still referring to this "turn over the books" appeal, 6260, was that case argued before the Circuit Court of Appeals on December 22, 1936? A. Yes, it was.

4343 Q. And before what Court? A. Before the Circuit Court of Appeals of the Third Circuit, composed of Judges Buffington, Davis and Thompson.

Q. And going back for a moment to the proceedings before the Court of Appeals on December 11th, what Court sat then? A. The same Court, Judges Buffington, Davis and Thompson.

Q. Now, after the argument before the Court of Appeals in the "turn over the books case," number 6260, what, if anything, was heard from the Court by you? A. With respect to that case?

Q. Yes, what was the next thing you heard from that Court about that case? A. In the following October I re-

4344 ceived a letter——

Q. That is, October, 1937? A. That is right, I received a letter from Mr. Rowland, the Clerk of the Court, stating that the Court wished a reargument and that the case would probably be heard on reargument on December 6th, 1937.

Q. Now, what action did you take when you were so advised by the Clerk? A. I made application to the Court on November 6th, and then filed a petition asking that the reargument be heard on an earlier day, setting forth as reasons the fact that the delay which had taken place in the decision of the case had impeded the administration of the bankruptcy affairs of the bankrupt's estate, that, first, we desired

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to complete the 21A examinations and that the audit and examination of the books of All Continent Corporation were a vital and necessary part of that investigation, and that it was vital and necessary that that examination and investigation should be completed before we proceeded with the trial of the recapture suit, and that involved in the recapture suit there were many securities, marketable securities, of considerable value, which were being depreciated by the general downward trend of the market; also, that there were assets in the estate which might otherwise be depreciated in value or lost to the estate unless we were permitted to proceed with reasonable promptness, and that it was important that 4346
we save every day possible.

It was announced by the Court, in answer to the application, that Judge Thompson was then ill and that he would not be able to return to the Court until December 6th, and it was their feeling that all of the Fox bankruptcy matters should be heard by that Court composed as originally, of Judges Buffington, Davis and Thompson.

By Mr. Harris:

Q. That all of the Fox bankruptcy matters should be heard by them? A. That all the Fox bankruptcy appeals——

4347

Q. You mean any such as might subsequently come before the Court, did you understand? A. That is what I understood, that all Fox bankruptcy appeals were to be heard by that Court, as composed of those three Judges, and that Judge Thompson——

Q. Have you that letter? Did you get that in the form of a letter? A. No, I didn't say that, I said that it was announced after the presentation of my application to advance the reargument by the Court, that they would not be composed as orginally of those three Judges until December 6th, which was the first date when Judge Thompson would be

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physically able to return to the Court, so that they denied the application to move up the date of reargument.

By Mr. von Holst:

Q. What did they say on this occasion as to the Court's desire, as to what Judges should sit in all the Fox cases? A. They stated that it was their feeling that the Court should be composed of Judges Buffington, Davis and Thompson in all appeals from the Fox bankruptcy matter, because that was the Court as it originally was composed.

4349

By Mr. Harris:

Q. Well, wasn't that customary and general in receivership and bankruptcy matters. A. I can't tell you that, Mr. Harris, I don't know whether that was the custom or not.

Q. It seems to me——

By Mr. von Holst:

Q. During this period of delay in the decision in the "turn over the books case", 6260, was Mr. Fox restrained from dealing in the assets of All Continent? A. Yes, there had been an order entered in the recapture suit by Vice-Chancellor Sooy, restraining All Continent Corporation
4350 from disposing of or in any wise encumbering any of its assets, except in the usual course of business. That was not a total restraint.

Q. Was the "turn over the books" appeal, 6220, reargued on December 6th? A. Yes, it was.

Mr. Neuman: 6260.

By Mr. von Holst:

Q. December 6th,—— A. '37.

Q. That is, case 6260? A. Yes.

Q. Well, what happened after that in the case. Did anything happen in that case for the balance of the year 1937? A. Nothing happened in that case until it was decided on March 31, 1938.

Q. By the Court of Appeals? A. That is right.

Q. But before that decision of the Court of Appeals what action had you taken? A. After waiting for a considerable time following the reargument and not obtaining any decision, despite the application I had made to advance the reargument, and stating the damage it was doing, the delay was doing, I prepared a petition which I filed, lodged with 4352
the United States Supreme Court, asking that a writ of mandamus should issue directed to Judges Buffington, Davis and Thompson, of the Court of Appeals of the Third Circuit, to compel them to decide that case, and I went to Washington and appeared by the United States Supreme Court on March 28, 1938, and asked for leave to file that petition, and leave was granted on that day; and it was three days after that that the opinion of the Circuit Court of Appeals of the Third Circuit came down.

Q. And what action did the Court take, did the Court of Appeals take? A. The Circuit Court of Appeals of the Third Circuit reversed Judge Avis's order of affirmance of the order of the Referee which directed the turning over the 4353
books.

Q. What did you do? A. Thereafter I filed an application with the United States Supreme Court for writ of certiorari to review that judgment, and a writ of certiorari was allowed.

Mr. von Holst: That appears in 304 United States 554.

By Mr. von Holst:

Q. Now, after the allowance of the writ of certiorari, what happened—— A. A short while——

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Q. —in the "turn over the books case"? A. A short while thereafter the books were turned over to the trustee in bankruptcy for examination and audit.

By Mr. Harris:

Q. This was not only after the certiorari was allowed, but after the appeal was argued. A. No, sir.

Q. No appeal argued in the Supreme Court? A. No, sir. An order was entered in the United States Supreme Court postponing the argument of the appeal from time to time
4355 until the audit and examination of those books could be completed, and when the audit and examination was completed, then on my application the writ was dismissed.

Mr. Harris: Oh, yes.

Mr. von Holst: And that appears in——

The Witness: Because the purpose of it had been accomplished.

Mr. Harris: Yes, I see.

By Mr. von Holst:

Q. And that voluntary dismissal of the petition appears in 305 United States 665? A. That is correct, I think that
4356 is the correct citation.

Q. And the turning over of the books after the granting of the petition for certiorari was a voluntary action on the part of Fox, is that right—of the All Continent? A. On the part of All Continent Corporation.

By the Master:

Q. How did they advise you that they were prepared to turn the books over? A. Well, they, Mr. Becker, representing All Continent Corporation, first approached me about that and said that—at the time—that he had always been

of the opinion that the books should have been turned over, but that Fox himself had opposed it, and that was the reason why he had opposed it all the way up, but he had finally persuaded Fox to release those books to the trustee, and then we began to settle the terms upon which an audit and examination would be made, where the books would be lodged, and in whose actual custody, and who would be the auditors, and that they would have leave if they desired to have someone present while the audit and examination was being made, and other terms of that character, and it was on a basis agreed upon thereafter that the books were turned over. 4358

Q. When was that, that Mr. Becker approached you? A. I can't now recall the day, but it was shortly after the writ of certiorari had been granted and before it had been put on the list for argument.

Q. He gave you no other reason except that he had now convinced Mr. Fox that the books ought to be turned over? A. That was the statement he made to me.

The Master: All right.

By Mr. von Holst:

Q. Now, I wish to go back and refer to the Eva Fox contempt case, which is appeal number 6472. Now, Mr. Brown, you have referred to the 21A proceedings before Referee Steedle, which I understand is one of the first things that happened after the order of reference had been made. A. That is correct. 4359

Q. Was Eva Fox ordered to appear and be examined? A. Yes.

Q. And that order was entered on July 6th? A. No, the order was entered on June 23rd.

Q. Oh. A. And the the subpoena which issued pursuant to the order was returnable on July 6th. That was the day she was to appear first.

Q. Did she appear? A. She appeared on that day.

Q. Was she examined on that day? A. No.

Q. She was excused from time to time, was she? A. She was, while other witnesses——

Q. While other witnesses—— A. —were being examined.

Q. —were examined; and was there a time when she was required to be examined? A. Yes.

Q. What date was that? A. My recollection; it was August 25th of 1936.

4361 Q. What position did Eva Fox occupy in the All Continent Corporation? A. She was the president of the corporation.

Q. Now, will you state what took place on——. A. August 25th?

Q. —August 25th? And I should ask you, first, whether you were present before Referee Steedle on that day. A. Yes, I was.

Q. Now, will you proceed.

By the Master:

Q. May I ask, what was the Capital Company which has been referred to here? Was that a creditor? A. Capital

4362 Company was a creditor of the bankrupt.

Q. Creditor of Mr. Fox? A. That is right.

By Mr. Harris:

Q. A judgment creditor? A. A judgment creditor, yes.

By the Master:

Q. And the Chicago Title and Trust Company, also? A. Pardon me, they were not only a judgment creditor, partly a judgment creditor and partly common creditor. They had a claim much in excess of the judgment, which was based on accumulations.

Mr. Harris: Yes, that is right.

The Witness: That is right.

By Mr. Harris:

Q. They were one of the petitioning creditors, were they, in the bankruptcy? A. No,—you mean for the 21A? This was a voluntary petition.

Q. Oh, it was a voluntary petition, oh, yes.

By the Master:

Q. Was the Chicago Title and Trust Company in the 4364
same—— A. Chicago Title and Trust Company were a creditor of the bankrupt. They also had a judgment, but the judgment was entered, I think, three or four days after the bankrupt's adjudication, after a rather prolonged trial in New York.

By Mr. von Holst:

Q. Now, will you state what occurred at the hearings before Referee Steedle on August 25? A. Eva Fox was sworn and she was interrogated for, I judge, about an hour, or over that. The preliminary interrogation having been completed, we then got to—the interrogation was addressed to 4365
the transactions of the bankrupt with All Continent Corporation, but it did not proceed very far until Mrs. Fox professed to be ill and unable to continue, and as a result of her pleading, the Referee discontinued the examination for that day, with the understanding that she would return the day following, but on the day following she did not appear, it being stated by her attorneys that she was physically unable to appear, and then it was agreed by her attorneys that the Referee might appoint a doctor of his own selection to examine her, as proof of the fact that she was unable to appear, and the Referee appointed Dr. William J. Carring-

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ton, of Atlantic City, who made an examination, and he filed a written report expressing the opinion that she was physically able to appear.

Q. And that written report appears on page 33 of the C. C. A. printed record in case number 6472? A. What page was that?

Q. Page 33, according to my notes, Mr. Brown. A. Yes, that is correct.

Q. Following upon the Doctor's report was Eva Fox directed to appear and testify? A. Yes, she was.

4367 Q. On what day was she to appear? Was it on September 1st? A. That is my recollection.

Q. 1936? A. I was trying to fix it, it was the date I had in mind, I think it was September 1st.

Q. And on that day did Dr. Carrington again examine her? A. Well, she did not appear on that day and her attorneys presented two affidavits, one made by a Dr. Hershon, and the other by Dr. Ritter, who was Mrs. Fox's personal physician in New York, stating that in their opinion she was physically unable to attend.

Q. Mr. Brown, I don't know whether we have got the sequence just right. She failed to appear on September 1st, isn't that right? A. Yes, then there was——

4368 Q. Then in the afternoon of that day didn't Dr. Carrington again examine her? A. There was another examination by Dr. Carrington.

Q. By Dr. Carrington, and he made a report in the form of an affidavit? A. Affidavit.

Q. On the second examination, did he not? A. Yes.

Q. And that appears on page 36 of record 6472? A. That is correct.

Q. And states that the Doctor was still of the same opinion—— A. Yes.

Q. ——as in his first opinion. And it is also true, is it not, that Dr. Carrington also put his original first report in

affidavit form, as appears at page 40 of the printed record? A. Yes.

Q. Now, then, after that second report of Dr. Carrington did Referee Steedle make any order on Eva Fox? A. Ordered her to appear.

Q. The next day, on September 2nd? A. No, I don't think it was September 2nd,—yes, I think it was, but Dr. Carrington's affidavit was not made—he reported orally first to the Referee, and then finally filed his affidavit, which was sworn to, on September 4th.

Q. Well, did she appear on the day ordered by the 4370
Referee? A. No.

Q. And was it on this occasion, on her failure to appear on that occasion, that her attorneys presented these two affidavits—— A. Yes.

Q. —from the Doctors that you mentioned? A. Yes.

Q. Then what order did the Referee make? A. Well, then there was a discussion about still a third examination to be made by three physicians, one to be appointed by the Referee, one to be appointed by the petitioning creditors in the 21A examination, and one to be appointed in her behalf, and that those three were to join in the examination, and that examination was refused.

4371

Q. By whom? A. By the attorneys for Mrs. Fox, they refused to permit her to submit to that examination, and then the Referee announced that there was nothing left for him to do but to cite her in contempt, which he did.

Q. He filed his certificate, did he,—— A. Yes.

Q. —on September 8th. A. I think that is the date.

(The witness examined the record.)

The Witness: That is the date of the Referee's certificate. It appears on page 18 of the printed record.

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By Mr. von Holst:

Q. In 6472? A. Yes.

Q. And then what action did the creditors and the trustee, Steelman, take? A. Well, while Steelman joined in the proceeding before Judge Avis of the District Court, to have her adjudged in contempt,——

Q. That was—— A. —I did not participate actively in that proceeding before Judge Avis.

Q. Yes. A. There was a hearing, there was testimony taken, and it finally resulted in the judgment which was ap-
4373 pealed to the Circuit Court of Appeals of the Third Circuit.

Q. So Judge Avis did finally adjudge Eva Fox to be in contempt of Court, is that right? A. Yes.

Q. And that appears at page 157 of the record in appeal 6472, I think, the order—— A. The opinion, the opinion of Judge Avis appears on page 157.

Q. And the order on page—— A. Findings of fact, conclusions of law and order appear on page 160.

Q. And by that order Eva Fox was to appear on what date for sentence? A. She was to appear on June 4, 1937.

Q. With leave granted that she might appear prior thereto and purge herself of contempt, is that right? A. That she might appear and testify before the Referee, thus
4374 purge herself of contempt.

Q. Now, was any appeal taken from Judge Avis's order? A. Yes, to the Circuit Court of Appeals of the Third Circuit.

Q. And when was application made to the Court of Appeals of the Third Circuit to allow the appeal? I think that appears on the docket entries. A. May I look at the record?

Q. In 6472.

Mr. Neuman: It is May 19, 1937.

Mr. von Holst: And do the docket entries, may I ask, also show that the appeal was granted by the C. C. A. on May 25th?

Mr. Neuman: Well, it shows notice of motion——

The Witness: Judge Avis allowed the appeal first by the order on May 11, 1937, which appears on page 168 of the record. I don't know what the C. C. A. docket entries show.

By Mr. von Holst:

Q. And referring to Amici Exhibit 139, the docket entry in case number 6472, that shows that the case was transferred to the argument list on September 20th, reading the entry, "Sept. 20 Transfer to Argument List". A. I also note 4376
on the docket entries that under date of May 25, 1937, there was an order entered in the Circuit Court of Appeals granting motion for appeal.

Q. Yes, the entry on May 25 is, "May 25, 1937——

Mr. Harris: Well, this is in evidence. Why do you read it?

By Mr. von Holst:

Q. —"Order Granting Motion for Appeal filed."

Now, when was that appeal in that Eva Fox contempt case, 6472, set down for argument? A. On December 6th, 1937. 4377

Q. And that was the same day as the argument in the "turn over the books" appeal case, is that right? A. Yes, there was a motion to advance the argument of that case made at the same time I moved to advance the reargument of the "turn over the books", which application was denied for the same reason that was given to me for denial of my application.

Q. Well, this contempt case was argued on December 6th, was it? A. Yes.

Q. Before Judges Buffington, Davis and Thompson? A. Yes.

Q. And what action did the Court take on this Eva Fox contempt case? A. They took the matter under advisement, after argument.

Q. And thereafter what was the next thing that occurred in the Eva Fox contempt appeal? A. We were advised by the Clerk to appear—that the Court had directed us to appear before it in January. I think it was on January 20, 1938, as we understood, for reargument.

Q. Was that reargument had on January 20, 1938? A. We appeared on that day.

4379 Q. Were you present? A. When the—yes—and when the case was called it was announced that we were there—by Judge Davis—he said that we had been brought there in order that we might be informed that they felt that they should have a physical examination made of Mrs. Fox by a physician to be appointed by the Circuit Court of Appeals, he to report back his findings, that the examination should be made by the doctor with no representative of either party to the suit or the appeal present at the time, and that the costs and expense of that examination would abide the ultimate result of the case, it being indicated at that time that the Court's order would probably be that the cost of examination would be divided between the parties, half to be borne
4380 by each.

By Mr. Harris:

Q. Just as a matter of curiosity, how long had it been since Mrs. Fox had been examined? A. Well, she had—she was adjudged in contempt for failure to appear on August 25, 1936, and this was January 20, 1938.

Q. So there had been quite a while since she had been examined, over a year? A. Fifteen or sixteen months, something like that.

Q. Yes. A. That was objected to, on our behalf, by Mr. Walter Hanstein, who was the attorney for creditors. He

objected on the ground that there was no power in the Court to create its own record on which it would decide that appeal, that the record on which the decision should be made was that record which was before the Court below, and not such a record as might be made as a result of the appellate court's acts.

Nevertheless, the order was entered and the doctor appointed.

By Mr. von Holst:

Q. When was the next appearance before the Court of 4382
Appeals of the Third Circuit in this Eva Fox contempt case? A. It was in March of 1938, when we received—I received a letter from Mr. Rowland, the Clerk of the Circuit Court of Appeals, with which he enclosed a copy of the Doctor's report, and advising us that the Doctor's report would be heard on that day mentioned in the letter.

By the Master:

Q. What was the date of the Doctor's report? A. I can give you that date—the date when it was to be presented to the Court was on March 18th.

Q. What was the date of the report itself? A. The date 4383
of the report was January 26th, 1938.

By Mr. von Holst:

Q. Were you present in Court on March 18th, 1938? A. Yes.

Q. Before what Judges? A. Judges Buffington, Davis and Thompson.

Q. Now, will you relate what transpired on that day?

Mr. von Holst: Just a moment, please. Now, what is the question?

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(The question was repeated by the reporter as follows:

"Q. Now, will you relate what transpired on that day?")

Mr. von Holst: Yes.

A. It is my recollection that when that matter was called, Judge Davis announced that we had been called there to receive Dr. Patterson's report, and that Dr. Patterson would be sworn and that the parties might examine him as they
4385 chose.

Mr. Hanstein again speaking for the creditors and the trustee, announced that we did not propose to participate in examination of Dr. Patterson, we stood pat on our opposition to that procedure, and again reiterated his objections to the creating of such a record in the appellate court, and there was some colloquy between counsel and the Court in which Judge Davis participated, as to who had requested the examination to be made.

Mr. Rosenblatt, of the firm of Hirsh, Newman, Reass and Becker, who appeared there in behalf of Mrs. Fox, had said to the Court that he did not understand why Mr. Hanstein was now opposing it because it was he who had orig-
4386 inally suggested it, that the examination be made.

That prompted Mr. Hanstein to call his attention to the fact that he had not suggested it, but on the contrary, had opposed it, and he was confirmed in that recollection by Judge Davis, who said that he recalled that we had opposed it, and not suggested it, and then Mr. Rosenblatt proceeded to examine Dr. Patterson, and after he was concluded, he concluded his examination, Mr. Hanstein was asked again whether or not he wanted to examine the Doctor or cross-examine him. Mr. Hanstein said no, that he would not participate in the proceeding at all. In fact, when the Doctor was first called it was asked whether or not there were any

objections to Dr. Patterson's qualifications, and Mr. Hanstein said to be consistent he would even have to—he couldn't even concede that.

Mr. von Holst: Mr. Rodebaugh, have you got a photostat of the transcript of the proceedings?

By Mr. von Holst:

Q. I hand you a document and ask you what that is. A. That is the typewritten transcript of the proceedings had before the Circuit Court of Appeals in the Eva Fox contempt case, No. 6472, on March 18th, 1938. 4388

Q. It is a certified copy of the transcript, is it? A. It appears to have been certified.

Mr. von Holst: We offer that in evidence as Amici Exhibit 145. We will see that this gets back to you, Mr. Brown.

By Mr. von Holst:

Q. What action did the Court of Appeals take in this Eva Fox contempt case?

Mr. von Holst: We should like to return the original of Amici Exhibit 145 to Mr. Brown and let a 4389 photostat be substituted in lieu thereof.

Mr. Harris: Is this a photostat of each and every part of that?

Mr. Neuman: Yes.

Mr. Harris: All right.

(Photostatic copy of certified copy of notes of hearing held March 18, 1938, before Judges Buffington, Davis and Thompson, in the case of Eva Fox, Appellant, vs. Capital Company, Chicago Title & Trust Company and Hiram Steelman, Trustee in

Bankruptcy for William Fox, Appellees, No. 6472, In the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 145.)

Mr. von Holst: Will you read the question, please?

(The question was repeated by the reporter as follows:

"Q. What action did the Court of Appeals take in this Eva Fox contempt case?")

4391 A. They filed an opinion in that case on April 8th or thereabouts——

Mr. von Holst: I think it is April 25th, 1938, as reported in 96 Fed. 2nd, 684.

The Witness: Well, that, I think, was the Leitstein opinion, was it not?

Mr. Neuman: April 25th is the correct date, as shown on 6472.

The Witness: Well, then, I have got them reversed. Along that date the Circuit Court of Appeals, on or about that date the Circuit Court of Appeals filed an opinion and entered its order reversing Judge Avis's judgment of contempt.

4392 Mr. Harris: Is the opinion reported?

Mr. Thiess: Yes, I think it is of record here.

Mr. Neuman: It appears in this docket here.

Mr. Harris: Is it reported?

Mr. Neuman: 96 Fed. 2nd 684.

Mr. Harris: All right.

Mr. von Holst: I also offer in evidence certified copy, photostat of the certified copies of the minutes of the Court of Appeals in the two Fox contempt cases, the second of which I am coming to now, but inasmuch as they appear in the same exhibit I will offer it at this time.

Mr. Harris: Is this the case 6472?

Mr. von Holst: These being the minutes in cases 6472 and 73, 6473 being the Leitstein contempt that we are now going to turn to.

Mr. Harris: All right.

Mr. von Holst: I offer it at this time——

The Master: You said the Fox contempt; you mean Mrs. Fox?

Mr. von Holst: That is right, Mrs. Fox, and Herbert Leitstein contempt—as Amici Exhibit 146.

(Photostatic copy of certified copy of entries 4394
in the Minute Books of this court referring to the cases of Eva Fox, Appellant, vs. Capital Company, et al., and Hiram Steelman, Trustee in Bankruptcy for William Fox, appellees, No. 6472; and Herbert Leitstein, appellant, vs. Capital Company and Chicago Title & Trust Co., appellees, No. 6473, in the United States Circuit Court of Appeals for the Third Circuit, was marked Amici Exhibit 146.)

By Mr. von Holst:

Q. Now, Mr. Brown, who was Herbert Leitstein? A. 4395
Herbert Leitstein was the auditor who had been in the employ of Fox before the—prior to the formation of All Continent Corporation, and subsequently he kept the books and records of All Continent Corporation, as well as Fox, the bankrupt, and was in the employ of that corporation and Fox at the time of the bankruptcy.

Q. Did he appear and testify in the 21A proceedings before Referee Steedle? A. Yes, he was under interrogation for a number of days.

Q. Had he at first answered the questions that were asked him? A. Well, he had been somewhat evasive in

many respects, but we had been slowly making some progress.

Q. Well, I mean, he had not refused to answer—— A. I mean, by getting answers from him.

Q. He did not at first refuse to answer? A. No.

Q. Did he finally refuse to answer? A. Yes.

Q. Do you know about when that was? A. It was sometime in October of 1936.

Q. And were you present in court? A. Yes.

Q. Will you state what transpired? A. Leitstein was being questioned and examined respecting the records of
4397 All Continent Corporation, and he was asked a question with reference to the books and he refused to answer.

He was directed by the Referee to answer the question that had been put to him. He still refused.

There was also an effort, a petition made to the Court, to have certain entries that had been adverted to in the books copied in the record, and Leitstein put his arms over the books and refused to permit that to be done, and as a result of his actions on that occasion he was cited by the Referee in contempt.

Q. And the Referee's citation was entered on October 31, 1936, as appears on page 8 of the C. C. A. printed tran-
4398 script in case number 6473? A. Just a moment—yes.

Q. And a hearing was held before Judge Avis on this contempt? A. Yes.

Q. And was that on December 4, 1936, the hearing? A. Yes.

Q. Judge Avis rendered an opinion finding Leitstein guilty of contempt on April 20, 1937, as appears on page 188 of the transcript of appeal in case 6473? A. Yes. Judge Avis's findings of fact, conclusions of law and order appear on page 194.

Q. Of transcript 6473? A. That is right.

William Elmer Brown, Jr.—For Amici Curiae—Direct 4399

Q. And those findings and conclusions were filed on April 29, 1937? A. That is the date of Judge Avis's order.

Q. And of the findings and conclusions? A. Yes.

Q. And that is the same day as the day of entry of the findings and conclusions in the Eva Fox contempt case, is it not? A. Yes.

Q. When was Leitstein ordered to appear for sentence? A. June 18th, 1937.

Q. And that appears where? A. In the findings of fact, conclusions of law and the order of Judge Avis.

Q. Page what of the transcript? A. Well, the direction of the order appears on page 194. The order begins on— 4400
198, rather—the order begins on page 194.

Q. And the citation on appeal in that matter was filed in the Circuit Court of Appeals on May 18th? A. I don't know what the docket entry shows as to that.

Mr. Neuman: That is right.

The Witness: The order allowing the appeal was on May 11th, 1937.

By Mr. von Holst:

Q. Now, picking up the appearances before the Court of Appeals in the other cases and connecting them with 4401
this Leitstein case, on November 8th, 1937 you have testified that you appeared and moved to advance—you appeared before the Court of Appeals, Judges Buffington, Thompson and Davis, and had moved to advance your hearing in the "turn over the books" appeal, is that right? A. Well, we appeared before the Court and Judge Thompson was not sitting on that day.

Q. Oh, but on that day did Mr. Hanstein also appear? A. Yes.

Q. And did he make any motion with regard to the two contempt cases? A. Yes.

4402 *William Elmer Brown, Jr.—For Amici Curiae—Direct*

Q. What was it? A. To advance the argument to an earlier day than December 7th, which had been fixed, had been previously fixed.

Q. So that on December 6th, 1937 what cases in all were argued before the Court of Appeals? A. There was the reargument on the appeal from the order to turn over the books, there was the argument in the two contempt appeals, the one against Eva Fox and the other against Herbert Leitstein.

Q. Yes, and on this occasion what Court sat? A. Judges
4403 Buffington, Davis and Thompson.

Q. And on November 8th the Court that sat was—— A. I think—the docket entries would show, but I think it was just Judge Buffington and Judge Davis.

Q. That is the time that Judge Thompson was not present? A. That is the time when Judge Thompson was not present.

Q. And on April 2nd, 1938 the Court of Appeals rendered its decision reversing Judge Avis in the Leitstein contempt case? A. Yes.

Q. As reported in 96 Fed. 2nd 23.

Mr. Thiess: Direct examination is closed.

4404 The Master: Well, suppose we take a recess.

Mr. Harris: I have nothing.

The Master: You have nothing?

(Discussion off the record.)

The Master: I have nothing to ask.

Mr. von Holst: I have one or two questions I forgot to ask, in connection with the identification of this so-called Steedle diary. It is on a different subject. If I may put those questions then I will be through.

By Mr. von Holst:

Q. Mr. Brown, during the year 1936 did you have occasion to see a document in the possession of Referee Steedle? A. Yes.

Q. And how did it happen that you saw it? A. On one of the days in August of 1936, following one of the 21A hearings, Mr. Steedle asked me to go to his office, and when I got there he exhibited to me a typewritten paper and asked me to read it, which I did.

Attached to the typewritten paper at that time there were some supplemental memorandums in handwriting— 4406
or, not attached to it, but with it, he handed to me with it.

Q. Did you read it? A. Yes.

Q. Now, did you at any subsequent time during Mr. Steedle's lifetime read this instrument? A. Yes, later in the year, and it is my recollection it was in the latter part of November of 1936 I again went to his office, at his suggestion, and he showed me that same paper, with some additional typed memorandum to it.

Q. And on this occasion were there any yellow sheets or supplementary matter? A. No.

Q. And did you read it again? A. Yes.

Q. From beginning to end? A. Yes.

Q. Now, when did Mr. Steedle die. A. I think he died 4407
in April or May of 1937.

Q. After this November occasion, when you read this document, did you read it again during Mr. Steedle's lifetime? A. No.

Q. Did anything transpire with respect to that document after Mr. Steedle's death. A. Yes.

Q. Please state what it was. A. Mr. Hiram Steelman was the attorney for Mr. Steedle's widow in the settlement of his estate, and among Mr. Steedle's effects this document was found, it was in a sealed envelope at the time it was

found, and then Mr. Steelman exhibited to me, sometime after Mr. Steedle's death, the envelope had been torn at one end, but it contained this document, and for a time that document was in my possession.

Q. Did you read it after it was delivered to you, after Mr. Steedle's death? A. Yes.

Q. What was its condition with respect to the—what was its condition then as compared to the condition in which it was when you read it the last time before his death, in November? A. You mean as to its contents?

4409 Q. Yes. A. It was the same.

Q. What did you do with the document after it was delivered to you following his death? A. Well, I retained it in my possession and it was in my—the vault or safe in my office for quite a period of time, and until I returned it to Mr. Steelman, and then there were one or two other occasions after that when Mr. Steelman delivered it again to my possession and I had it for a while, and I have it in my possession now.

Q. During some of the time, I suppose, it has been in the possession of the United States Government. A. At the time of the Kaufman proceeding before the three Masters Mr. Steelman and I were there to testify, and at that time
4410 that original statement was offered in evidence, and it was left with the Masters with the definite understanding that it would be returned by them and returned to us.

Mr. Harris: Offered, but I understand not received in evidence.

The Witness: I don't know.

Mr. von Holst: It was received at the time but excluded by them in their opinion, Mr. Harris.

The Witness: I see. I thought it had been received in evidence at the time, I am not certain as to that, but, at any rate, I delivered—we delivered it to the Masters and I did not get it back from the

Masters until a few days ago, and, in fact, had to obtain Judge Bard's consent to it being released by the Clerk, all the exhibits in the three-Master hearing having been impounded in the Clerk's possession. This particular document, however, was kept separate and apart from the other exhibits, but, nevertheless, delivered to the Clerk, and it was in his custody and the Clerk finally delivered it to me.

By Mr. von Holst:

Q. Have you the document with you? A. Yes. 4412

Q. Will you produce it?

(The witness produced the document.)

Mr. von Holst: I ask that this document be marked Amici Exhibit 147 for identification.

Can I mark the back of this?

The Witness: Oh, I think there is no objection to that.

Mr. von Holst: I will ask you if you will consent to leave this document in the custody of Master White until after other witnesses shall have testified with respect thereto, whereupon we can return the original and substitute a photostat. 4413

The Witness: I have no objection to that.

(Discussion off the record.)

(The Steedle diary was marked Amici Exhibit 147 for identification.)

By Mr. von Holst:

Q. Handing you Amici Exhibit 147 for identification, I ask you if that is the document which you have testified that you saw in completed form in November, 1936. A. Yes.

Q. And is it also the document that was handed to you by Mr. Steelman following Mr. Steedle's death? A. Yes.

Q. Did Mr. Steedle when he first asked you to read this give you any reason why he wanted you to read it? A. I don't recall that he did. The reading of that document the first time by me came about in this way, that Mr. Steedle had related some of these happenings and circumstances that are stated in this paper now to me orally, before this was written. I had suggested to him that under the circumstances that he had related to me a memorandum or diary of the happenings ought to be kept, because it did not
4415 seem to me that it could be expected that he would not some day perhaps be called upon to relate them, it would be well to have a memorandum with which he could refresh his memory, and then he proceeded to prepare his statement of what had happened at the time, and he called me in to see this statement that he had prepared, and then after the paper had been finished, at a later date, he again asked me to read it, which I did.

Mr. von Holst: No further questions.

Mr. Harris: Your Honor, I would really like very much—now, this needn't be on the record.

Mr. von Holst: Pardon me, if there are no further
4416 questions from Mr. Brown, I think he would like to go.

The Master: You have no questions?

Mr. Harris: No.

The Master: That is all, Mr. Brown, thank you very much.

(Discussion off the record.)

The Master: We will adjourn until such date as you gentlemen agree upon, either Friday morning or tomorrow.

Transcript of Hearing, November 6, 1942

4417

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White & Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Friday, November 6, 1942, at ten o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

J. BERNARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois).

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois). 4418

Amici Curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois).

Counsel accompanying Amici Curiae.

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.).

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, N. J.).

JOHN R. MCCULLOUGH, Esq. (100 Broadway, New York, N. Y.). 4419

Representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued).

GEORGE MALLET PREVOST, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Lieutenant, will you please state your full name and residence? A. George Mallet Prevost, 1310 Locust Road, Northwest, Washington, D. C.

4420 *George Mallett Prevost—For Amici Curiae—Direct*

Q. And when were you called to the service in the Navy the last time? A. I reported on May 3, 1941.

Q. And what was your occupation prior to the time that you returned to the Navy? A. Patent lawyer, junior member of the firm of Prevost and Prevost, National Press Building, Washington, D. C.

Q. And as a patent attorney were you interested in or did you know of the case of Universal versus Root? A. Yes, I did. Our firm had represented a number of oil companies, and at that time we were counsel for Danciger Refineries, of
4421 Tulsa, Oklahoma. In a case which involved the same patents that were sued upon in the Root case, and so we were naturally interested in that Root case.

Q. Do you remember that you attended the argument before the Court of Appeals of the Third Circuit in this Root case on January 7th, 1935? A. Yes, I did.

Q. Will you state how it happened that you attended that argument? A. Mr. Charles R. Burke, of Tulsa, who was in the employ of Danciger Refineries and was more or less in charge of the technical conduct of the case, had requested that I go to this hearing on the appeal of the Root case as an observer and to report to him.

Q. And you did attend? A. I did.

4422 Q. And did you report to him? A. I did.

Q. Have you a copy of the letter that you sent to Mr. Burke reporting on that argument? A. Yes, sir.

Q. This document that you produce, is this a carbon copy of the letter that you sent to Mr. Burke? A. Yes, sir, that is a carbon copy, that was taken out of the files of my office.

Q. And when was this letter written, and where? A. On January 8th, it was written in Washington, D. C., sent to Mr. Charles R. Burke, of the Danciger Refineries.

Mr. Thiess: I have a copy of that letter here if you wish to look at it.

Mr. Harris: Well, are you going to offer this in evidence.

Mr. Thiess: Yes.

Mr. Harris: Well, Your Honor, I don't think we even ought to read it. It is grossly improper. It is just full of self-serving declarations, it is hearsay,——

The Master: You are offering a letter from a witness who was present at the argument, to Mr. Burke?

Mr. Thiess: Yes.

The Master: On what theory do you think it is relevant?

4424

Mr. Thiess: Well, on the theory that Lieutenant Prevost here states as to what happened at the argument, for the purpose of showing what was said and done at the argument.

The Master: Well, I am quite sure the letter would not be evidence. I can rule on any question you ask him as you go along. I will sustain the objection to the letter. You can use it to refresh his recollection, if there is anything relevant in the matter that you have to present.

By Mr. Thiess:

4425

Q. When you attended the argument on January 7, 1935, do you remember that you were associated with anybody else at the time, sat with anybody at the argument? A. As I recall it, I sat near Judge German, of Skelly, and Mr. E. P. Brown, I believe his initials are, of the Jenkins Petroleum Company.

Q. And do you remember that one of the issues in that case was the meaning of the phrase "without substantial vaporization";——

Mr. Harris: Just a moment, I object to that.

By Mr. Thiess:

Q. —contained in each of the claims in suit,——

Mr. Harris: I object to that.

By Mr. Thiess:

Q. —of the patent in suit?

Mr. Harris: I object to that. I think this lawyer's characterization of what the issue was is something that he is not competent to testify to. The briefs and the opinions and the arguments, if there are copies
4427 of them here, are the proper evidence and would speak for themselves. I object to this witness giving us in a moment, in this off-hand way, and by this improper method, a statement of what he claims the issues were.

Mr. Thiess: Well, that is merely a preliminary statement.

Mr. Harris: Well, I think——

The Master: What was the question, please, Mr. Rodebaugh, exactly?

(The question was repeated by the reporter as follows:

4428 "Q. And do you remember that one of the issues in that case was the meaning of the phrase 'without substantial vaporization', contained in each of the claims in suit, of the patent in suit?")

The Master: I don't suppose it will do any harm for him to answer it.

Mr. Harris: I think he can say what they talked about, but whether that was the issue or not——

Mr. Thiess: This is just a preliminary question.

Mr. Harris: You mean that they argued about that question?

Mr. Thiess: I am going to get to that.

Mr. Harris: I don't like the word "issues". I don't think this witness is sufficiently expert to testify what the issues are. They are shown by the briefs and by the opinions.

The Master: Mr. Thiess, suppose you make an offer as to what you intend to prove by this witness, and let's see whether it is relevant to this case.

Mr. Thiess: Well, I intend to prove by this witness that he attended the argument, that at the argument Judge Buffington asked a number of questions which were very pertinent, and that revolved about that main issue, and that those questions showed how the Court considered this case at the time of the argument. 4430

Also, I wish to show that those questions that were asked by Judge Buffington made a real impression upon the people that were there, as to how the Court was affected by this argument.

Mr. Harris: Well, I object to that offer as irrelevant, incompetent and immaterial, in each and every possible respect.

The Master: Well, I will sustain the objection to the offer. In my opinion remarks made by the Judges from the bench, or discussions that take place at an argument, are not material, as they do not bind the Judges nor anyone else concerned with the case. 4431

That is all you have from this witness?

Mr. von Holst: If the Master please, there is one aspect of the proof—we understand full well that that is true, what you have just said, but one aspect, one question which will be in issue in this case when the briefs are finally filed before you, will be the question of when Morgan Kaufman was retained and the motive for retaining him.

The Master: Well, do you intend to ask this witness anything which will bear on that question?

4432 *Colloquy*

Mr. von Holst: The point is this, that our offer of proof by this witness is that the argument went against the Universal, that Judge Buffington's remarks plainly indicated that he believed that the words "without substantial vaporization" in the claims of the Dubbs patent meant that the accused process was not infringing, because the accused process had very substantial vaporization in the coil, and that Judge Buffington refused to accept the plaintiff's view of what substantial vaporization meant. The plaintiff was contending that it meant liberation of
4433 vapors from a liquid surface. Defendant was contending that the word "vaporization" was a word commonly used in the art, and that it meant the change of state from liquid to vapor. Judge Buffington narrowed the argument down to that one issue, and in the course of his remarks indicated that so far as he was concerned vaporization meant the change of state, the word commonly used in the art.

Now, that was the impression of the Court at the argument on January 7th.

Now, going back to my other point, there is evidence in this case which we say is wholly unconvincing that Morgan Kaufman was retained in 1932.
4434 Your Honor has in mind the fact that the Halle diaries for the year 1932 were never produced, that the first mention of Morgan Kaufman's name in Halle's diaries is the entry of April 15th, which reads —1935—which reads, "Judge Haight called with Morgan Kaufman, attorney."

We say that the issue, the question, of when Morgan Kaufman was retained, whether in 1932 or whether in 1935, after the argument, is material, and that the way the argument went has a bearing upon the motive of Universal in hiring Morgan Kaufman after that time. Hence we say that the question is

more than whether the Court agreed with the defendant at the argument or did not agree with the defendant at the argument, the question goes to whether the Universal had a motive for hiring Morgan Kaufman after the argument had gone against them.

Mr. Harris: Well, Your Honor, as far as that is concerned, the record already shows that Judge Buffington voted for reversal. Now, what may have happened between the time he voted for reversal in January of 1935, and the time that the decision of the Court came down, in June, 1935, of course, is material. This does not help us on that, because this 4436
occurred on the argument, and as Your Honor very aptly remarked, you can never tell from what the Judge says on the argument how he is going to decide a case, and counsel on the other side already have on the record that Judge Buffington voted for reversal in the first instance, which, it seems to me, completely meets their point, if that is what they have in mind.

I should remind Your Honor, though, that the evidence of Mr. Hall and Mr. Behrens, to mention only those two, is that they knew that Mr. Kaufman was in the case at least as early as 1934, when the case was on trial, because Mr. Hall testified he was told by 4437
Mr. Belknap that Mr. Kaufman was available for any services, and Judge Haight met him, and Mr. Behrens met him, while they were trying the case.

Mr. von Holst: May I reply? I don't think Mr. Harris is correct in saying that Mr. Behrens identified Mr. Kaufman or met him at that time.

Mr. Behrens: Not as far back as that.

Mr. Harris: I beg your pardon, but Mr. Hall did so testify.

Mr. von Holst: Mr. Hall's testimony is not definite.

Mr. Harris: Judge Morris testified to that effect.

4438 *Colloquy*

Mr. Thiess: Very indefinite.

Mr. Harris: He said that was his best recollection.

Mr. von Holst: That may well be, and he may well be mistaken. On the other hand, the statement Mr. Harris made, that Judge Buffington voted for reversal, in our view has nothing to do with this situation. Of course, if Judge Buffington had voted for reversal, that in itself would be utterly immaterial, because the Universal would not have known of it. That was the significant thing, that Universal knew on the argument that Judge Buffington was against

4439 it, and hence——

Mr. Harris: Of course, we didn't know Judge Buffington had spent the evening with Judge Denison the night before the argument, either.

Mr. von Holst: That, again, is not the subject of this inquiry, and Judge Denison, of course, is dead.

Mr. Harris: Well, Judge Buffington will be here.

Mr. von Holst: But the Master gets my point, I trust.

The Master: Yes, I see.

Mr. von Holst: That it is the effect which the argument produced upon the Universal Oil Products

4440 Company that may bear upon the issue of when Kaufman was retained.

Mr. Harris: Well, of course, the impression that this witness got may not have been the impression that our lawyers got at all. As a matter of fact, it was reported to me that they were very happy——

Mr. Behrens: I was at the argument.

Mr. Harris: —at the outcome of the argument, and the Universal people, so far from getting such an impression as that, thought the case was going to be decided in their favor.

Mr. von Holst: I was present at the argument. Mr. Harris was not.

Mr. Behrens: I was.

Mr. Harris: Mr. Behrens was.

Mr. Behrens: I know that Hall at the end of the argument was completely satisfied that he had dislodged Buffington from his positon, after he had used the teapot example. That is the reason I remember.

Mr. Harris: You see, the diversity of views shows how unimpressive any such testimony as this is. I renew my objection.

The Master: It is, of course, very difficult to say what impression remarks of a Court or the arguments make upon bystander or the counsel involved. 4442

Have you any other evidence which indicates that Kaufman was not retained until after this?

Mr. Harris: He has no evidence. You mean, does he have any?

Mr. von Holst: Kaufman testified that he was retained in April, March or April, 1935.

Mr. Harris: '32.

Mr. von Holst: '32. In March and April of 1932 Mr. Belknap was in California, as appears from his diaries, recovering from illness. The entire absence in Belknap's diaries of any mention whatsoever of Kaufman's name—Belknap recounts his diaries show where he was, they show who he interviewed, they show his travels, he was never in Philadelphia according to his diaries at any time, and certainly he could not have been in Philadelphia when he was in California. 4443

Mr. Harris: My recollection of the Belknap diaries is that, without pinning it down to a month, during the spring of 1932 he was between Chicago, New York and Philadelphia.

Mr. Behrens: And Washington and Atlantic City.

Mr. Harris: And Washington and Atlantic City.

4444 *Colloquy*

Mr. von Holst: In March and April he was in California.

Mr. Behrens: All right, May, June and July.

Mr. von Holst: There is an entire absence in Judge Haight's bills that have been introduced in evidence of any mention of the name of Morgan Kaufman, and Judge Haight's diaries have been destroyed.

The Master: Are Belknap's diaries in evidence?

Mr. von Holst: Yes, sir.

Mr. Thiess: Yes.

4445 Mr. Harris: Now, there is another thing, Your Honor,——

The Master: Did Judge Haight say anything about talking to Mr. Kaufman at the time their briefs were prepared?

Mr. von Holst: I think he did.

Mr. Thiess: Yes.

Mr. Behrens: Kaufman was in the office on the testimony of five witnesses when those briefs were prepared, before the argument, there are at least five witnesses that so testified.

Mr. Harris: That is right, and Mr. Dwight testified that when the matter of Kaufman's bill came up, in

4446 the fall, Mr. Dwight testified that in the fall of 1935, when Mr. Halle conferred with him, Mr. William D. Whitney and Judge Haight, about Mr. Kaufman's bill, the statement was made then that Mr. Kaufman had been retained by Mr. Belknap in 1932, and Judge Haight demurred in no wise to that.

Now, I think in view of Judge Denison's remarks, that he was accusing none of the counsel, trial counsel in this case, and that unquestionably has been your viewpoint as contained in your briefs, to now stigmatize Judge Haight in this fashion is completely inconsistent with your position and absolutely uncalled for by the state of the record.

4447

The Master: Well, I don't think anyone has thrown any aspersions against Judge Haight.

Mr. Harris: Well, if he were instrumental or permitted the retention of Mr. Kaufman after the argument for the purpose of influencing the C. C. A., that would certainly be casting aspersion upon him.

The Master: Yes, it certainly would.

Mr. Harris: And Mr. Belknap had been dead for a year after the argument, so he could have retained him—that is, before the argument——

The Master: Have you put in evidence Judge Haight's statement?

4448

Mr. Neuman: Yes, it is in evidence.

The Master: It is in evidence. Is it your recollection that Judge Haight said he did confer with Mr. Kaufman or saw him at the time the briefs were prepared, Mr. von Holst?

Mr. von Holst: It is my recollection, yes.

Mr. Thiess: That is right.

Mr. von Holst: But on that point he may have been mistaken in a date.

Mr. Behrens: Of course, his bill shows the date.

Mr. von Holst: There is no reflection of any contact or confgrence with Judge Haight——

4449

Mr. Harris: Of course, everybody must be mistaken in order to make a case, that is the trouble.

The Master: Well, I doubt very much the relevancy of this testimony, frankly, but I think perhaps, in view of the statement made as to the purpose of it, we might receive it in brief form, and then I will preserve the question of its relevancy until later on.

Mr. Harris: All right.

The Witness: What was the question?

Mr. Harris: Why don't you reframe it?

Mr. Thiess: I will reframe it.

The Master: Go ahead. Make it as brief as possible.

Mr. von Holst: May I say to the Master that in view of the offer it seems to me that the letter, for the purpose for which it is offered, is pertinent, that is to say, the effect that the argument produced upon one who was present. Now, that is the sole purpose of the offer.

The Master: Well, Mr. von Holst, I think the letter at most could be used by the witness to refresh his recollection. I don't think a letter that he wrote
4451 to another person would be relevant.

By Mr. Thiess:

Q. Well, Lieutenant, at the time that you attended the argument, do you have any recollection respecting any statements made by any member of the Court of Appeals on the main issue of vaporization?

Mr. Harris: Well, strike out "main."

By Mr. Thiess:

Q. On the issue of vaporization. A. I remember very
4452 definitely that I got the impression from the questions and remarks of Judge Buffington that he was completely unimpressed by the very, what I might say, unusual interpretation of vaporization.

Mr. Harris: Now, I move to strike out the answer. It just contains conclusions: he was under the impression that Judge Buffington was under the impression of something or other—I think that is the most incompetent testimony I ever heard.

The Master: It is certainly not competent to prove anything except an impression made on the witness's mind, that is the only thing

Mr. Harris: Well, but his testimony is not only his impression, but his impression of Judge Buffington's impression.

The Master: Well, possibly he can rephrase that question.

Mr. Harris: I move to strike it out.

The Master: Strike that one out.

By Mr. Thiess:

Q. Will you just state what transpired? A. Judge Buffington said——

Q. You can refresh your recollection from this letter. 4454
A. Judge Buffington said——

Mr. Harris: Will you mark that for identification, the thing that he is refreshing his recollection from?

Mr. Thiess: All right. I will. Mark this for identification as Amici Exhibit 148. That is the letter from——

Mr. Harris: The witness to——

Mr. Thiess: From the witness to Mr. Charles Burke, under date of January 8, 1935.

(Copy of letter dated January 8, 1935, from G. M. Prevost to Mr. Charles R. Burke, c/o Daniger Refineries, Inc., Hunt Building, Tulsa, Oklahoma, 4455
was marked Amici Exhibit 148 for Identification.)

A. (Continued) I recall that Judge Buffington said that to him vaporization was vaporization. I remember definitely that he said those words.

Mr. Harris: Well, that is very enlightening, and I move to strike out the answer. I don't know what that means.

A (Continued) And he went further and stated that vaporization was a term commonly known in the art and he made a very interesting analogy in order to bring out——

Mr. Harris: I move to strike out "interesting."

The Master: Just say what he said, Mr. Prevost.

A. (Continued) He asked Mr. Hall to please tell him, when ice melts, when is the water generated, and when is it liberated, and I remember that—rather, I can't remember that Mr. Hall could answer that question.

Mr. Harris: Well, I move to strike out whether he could or not.

The Master: Or did, you mean.

4457

By the Master:

Q. You don't remember that he did answer, is that your answer? A. He was quite confused, I remember that.

Mr. Harris: I move to strike out the answer.

Mr. von Holst: No, I think that is proper.

Mr. Thiess: I think it is very proper.

The Master: I will sustain the motion to strike out those answers. Ask him whether he did reply to it. You can ask him that.

By Mr. Thiess:

4458

Q. Have you any further recollection, Lieutenant, respecting any——

Mr. von Holst: No, just a minute.

(Discussion off the record.)

By Mr. Thiess:

Q. Do you remember that Mr. Hall did reply to that question, respecting when ice melts when is the water generated and when is it liberated? A. As I recall it, he was so confused he couldn't answer that question.

By the Master:

Q. Well, your answer is, he did not reply? A. Yes.

By Mr. Thiess:

Q. And do you have any further recollection as to any other statement made by the Court, just at the end of the argument?

(The witness examined Amici Exhibit 148 for Identification.)

4460

A. I remember that he stated——

By Mr. Harris:

Q. Who stated? A. Judge Buffington—that a limitation placed in a claim, whether or not it was necessarily put in there, could not be ignored in interpreting the claim and reading it upon an accused process or device.

By Mr. Thiess:

Q. And he made that statement in connection with what? A. In connection with this term "without substantial vaporization" in the claims of the Dubbs patent.

Q. Do you recall anything else that occurred at the argument that impressed you? A. During the argument, you mean? 4461

Q. Yes, during the argument, and while you were there.

Mr. Harris: I move to strike out what impressed the witness.

The Master: Well, yes, I sustain the objection.

Mr. Thiess: All right.

By Mr. Thiess:

Q. Do you recall anything further that occurred at the argument and while you were there in the Court of Appeals,

4462 *George Mallett Prevost—For Amici Curiae—Direct*

in the room occupied by the Court of Appeals? A. Not in the room, no, sir.

Q. Well, what happened that you recall? A. I recall discussing the case afterwards, as we left the court room, with several other observers, and we were all at that time very much—very favorably impressed from the standpoint of the Root case.

Mr. Harris: I move to strike out the "we"—we don't know who the "we" are—and that they were favorably impressed.

4463 The Witness: Well, I——

By Mr. Thiess:

Q. Who were the "we"? A. I talked with Mr. Brown, of Jenkins. I talked with Judge German, of Skelly.

Mr. Behrens: Both defendants in other cases.

Mr. Harris: They were all defendants, members of the so-called confederacy who were defending these cases together.

The Master: The sum of the witness's testimony, as I understand it, is that, being interested in the cases as reprpsenting other oil companies, he was

4464 present, and he gained the impression that the Root Company would probably win the case. That is really the sum and substance of your——

Mr. Harris: I don't think so. He has only testified to what Judge Buffington said. What about the other Judges?

The Master: Well, I mean——

Mr. Harris: It was only Judge Buffington's remarks that impressed him.

The Master: I don't think it is relevant, but I will receive it for the purpose——

By Mr. Thiess:

Q. Was there anything said by any of the other Judges that you remember? A. I don't recall. I was particularly impressed with Judge Buffington's remarks, and I don't recall the others.

Q. You don't recall whether they made any remarks or is that the—— A. That is it.

Q. The purport of your answer.

Mr. Thiess: Well, that is all.

Mr. Behrens: I would like to ask some questions.

4466

Mr. Harris: I would like to have Mr. Behrens, who is a member of the bar, to ask the witness questions. Mr. Behrens was present at the argument himself.

Cross Examination by Mr. Behrens:

Q. Mr. Prevost, first of all, did you not at that time represent a company that was a defendant in a case in which Universal was plaintiff, in the Northern District of Texas? A. I did.

Q. And it was actively cooperating with the Root Company and its counsel during the whole period, and as late as 1938 or '9—1937 or '8? A. I don't recall that we were actively cooperating with them at that time. 4467

By Mr. Harris:

Q. You don't deny——

By Mr. Behrens:

Q. You were conferring with them constantly, however? A. Well, I hadn't.

Q. You, with other representatives of Danciger, including Mr. Burke? A. Well, Mr. Burke had no doubt had conferences with them.

4468 Q. And Mr. Ringolsky, who was general counsel of Danciger, do you have knowledge of his meetings with Mr. Thiess and Judge Denison and the others? A. At that time, I have not.

Q. Do you have any now? A. I know that he has at least since that time had conferences.

Q. No, do you recall at the arument after the ice example was debated between Judge Buffington and Mr. Hall——

Mr. Harris: That is, what he referred to.

4469 *By Mr. Behrens:*

Q. The one you referred to—do you recall the analogy that Mr. Hall then used, and what happened? A. No, I don't.

Q. Do you recall Mr. Hall's example of a teakettle,—— A. I recall that.

Q. —and the steam coming out of the snout of the teakettle? A. I recall that.

Q. And you could take the lid off and see the bubbles in the water? A. Yes, I remember him discussing that.

Q. And then Mr. Hall said, "Now, Judge Buffington, it is generation where the bubbles are and it is liberation when it is coming out of the snout." A. That is what Mr. Hall said.

4470

Q. Didn't Judge Buffington at that point nod his head and say nothing further? A. I don't recall.

Redirect Examination by Mr. Thiess:

Q. Now, let me ask you, Mr. Prevost, whether you recall whether Judge Buffington's statement respecting the limitation in the claim that you have referred to was made after the statement that Mr. Behrens referred you to, about the boiling water in the teakettle. A. You say, was it made after that?

Q. Yes. A. I think it was, sir, yes.

Mr. Thiess: That is all.

Recross Examination by Mr. Harris:

Q. Well, the statement that you first attributed to Judge Buffington, wasn't that the thing that Mr. Hall was answering by this teakettle illustration? A. That teakettle illustration came later, yes, sir.

Q. Yes, sir. 4472

Mr. Harris: All right.

Redirect Examination by Mr. Thiess:

Q. Came later than what? A. Later than the ice.

Q. Ice, but it did not come later than the statement as to the limitation in the claim? A. As I recall it, that was the last thing that the Judge said.

Mr. Behrens: No, Mr. Hall answered that.

Recross Examination by Mr. Behrens:

Q. Do you recall Mr. Hall's reply to Judge Buffington's 4473
comments about limitations placed in a claim by a patentee?
A. No, I don't.

Q. Do you recall that Mr. Hall stated to Judge Buffington, or, rather, asked Judge Buffington the question, "Is it not the rule of the patent law to vitalize a patent rather than to destroy it?" A. I don't remember that.

Q. You don't recall that.

4474 *Walter F. Rittman—For Amici Curiae—Direct*

WALTER F. RITTMAN, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Doctor, will you please state your full name, residence and occupation? A. Walter F. Rittman, consulting engineer, Pittsburgh, Pennsylvania.

Q. Are you familiar with the case of Universal versus Root? A. I am.

Q. In what way were you associated with that case? A. I was a witness on matters pertaining to technology.

4475

By Mr. Harris:

Q. For the Root Refining Company? A. Yes, sir.

By Mr. Thiess:

Q. Did you attend the argument before the Circuit Court of Appeals in that case on January 7th, 1935? A. I did.

Q. And how did it happen that you attended this argument? A. I was particularly interested as a technologist in how certain technical phases would be viewed and handled in that hearing.

Q. Did you attend during the entire argument? A. I did.

4476 Q. And will you please now state what was said by any members of the Court during this argument?

Mr. Harris: Well, of course, I have a continuing objection to this.

The Master: Yes, I would receive the evidence as I did in the case of Lieutenant Prevost, subject to your objection and——

Mr. Harris: Exception.

The Master: —exception, if one is required. I believe it is not any longer.

Mr. Harris: I don't think so.

A. The statement by the Court——

By Mr. Harris:

Q. What member of the Court, Dr. Rittman? A. Judge Buffington was of particular interest to me.

Mr. Harris: I move to strike out what was of interest to the witness. Just tell us what was said.

The Master: Well, just tell us what he said, Dr. Rittman.

The Witness: Yes, sir. Judge Buffiington asked counsel for the plaintiff in words as near as I can remember as follows: "When ice melts when is the water generated and when is it liberated?" 4478

And then at the end of the hearing Judge Buffiington said, in words to this effect: "It has often broken our heart to invalidate patents because of a limitation voluntarily inserted."

By Mr. Harris:

Q. Was that stated in court during the argument? A. That was said in the open court, when counsel and all were present.

By Mr. Thiess:

Q. And did you stay in the court room until after the 4479
Court had retired from the bench? A. I did.

Q. And after the Court had retired from the bench was there anything that occurred then which you remember that impressed you? A. Yes, I remember Judge Haight, who was counsel for the plaintiff, saying, "Where is Judge Buffington?"

By Mr. Harris:

Q. You mean, where does he stand on this matter, is that what he said? A. I don't know. Those are the words that I remember.

4480 *Walter F. Rittman—For Amici Curiae—Cross*

By Mr. Thiess:

Q. Do you know to whom he said that? A. He seemed to say it to everybody.

Q. Do you remember whether Judge Buffington made any other remarks? A. They are not clear in my mind. He undoubtedly—I can't remember sufficiently, with sufficient accuracy to attempt to state them.

Q. Do you remember whether the other members of the Court made any remarks? A. As I remember it, they did not.

Mr. Thiess: That is all.

4481

Cross Examination by Mr. Harris:

Q. Now, Dr. Rittman, you are consulting engineer for the Root Refining Company, aren't you? A. I was, yes, sir.

Q. And for the Winkler-Koch Company, you have done a good deal of work for the Winkler-Koch Company, haven't you? Just "yes" or no". A. I will have to answer no.

Q. All right. A. I was employed by the Winkler-Koch Company, they paid me,——

Q. Yes. A. ——but they weren't my boss.

Q. I see, the Root Refining people were your boss in that case? A. In that case, yes, sir.

4482 Q. But you were paid by Winkler-Koch, in part? A. Yes, sir.

Q. And also in part by the Danciger Refineries? A. I never received any pay from the Danciger.

Q. Well, what other companies did you receive part of your fee or some fee from in connection with the Root case? A. Only the Winkler-Koch patent company.

Q. And do you know where the money came from? A. I think I do.

Q. All right, where? A. It was contributed by the—by various refiners

Q. Who were interested in this case? A. I don't know that.

Q. Yes. A. But who contributed this money to the Winkler-Koch.

Q. What companies were those that you recall? There was the Skelly Oil Company? A. Skelly Oil Company was one.

Q. Globe Refining? A. Yes, sir.

Q. Mid Continent? A. No, the Mid Continent did not contribute.

4484

By Mr. Behrens:

Q. Anderson Pritchard? A. Anderson Pritchard, that is right.

Q. Rock Island? A. Rock Island, that is right, and at that time the National Refining Company, as I remember it. I may be wrong in this, but as I remember it, the Chalmette Petroleum Company was in that, and the Republic Oil Company.

Q. Cities Service, the Henry L. Doherty Company? A. No, sir.

By Mr. Harris:

4485

Q. And all of these companies that you mentioned as contributing either had been sued or were threatened with suit for infringement by the Universal Oil Products Company, is that not right, as far as you know? A. Could Mr. Thiess answer that for me?

Mr. Harris: I am sure he could, but he is not under oath. I will take his word for it.

Is that right, Mr. Thiess?

Mr. Thiess: That is right. White Eagle was one of these companies, was it not?

The Witness: Mr. Harris.

Mr. Harris: Yes, Dr. Rittman.

The Witness: Mr. Thiess called my attention to one other company, the White Eagle Oil Company.

Mr. Harris: All right. Mr. Behrens has a question, with Mr. White's permission.

By Mr. Behrens:

Q. How long did the argument last, Dr. Rittman, before the Third Circuit Court of Appeals? A. Several hours, about four hours, as near as I can remember.

4487 Q. Is what you have testified all that you remember as to what transpired at the argument? A. Oh, no, but that——

Q. Do you remember anything about the water kettle? A. Yes.

Q. Will you tell us what was said about it? A. That is not clear in my mind, but it was about water boiling, and when it comes out of the spigot, a stream, and whether the top moves.

Q. Do you not recall that Mr. Hall used the water kettle analogy or example in reply to the ice illustration, that after he and Judge Buffington had argued about the ice, he then replied and said, "Judge Buffington, when water is boiled in a teakettle you can lift the lid and see the bubbles in the
4488 water, and that is vapor that has been generated, and the steam coming out of the snout is water that has been liberated." A. That was later, Mr. Behrens.

Q. It comes after the ice illustration? A. Mr. Hall discussed—you mentioned an argument between those two gentlemen; there was no argument, the Court asked a question and then Mr. Hall proceeded to answer it.

Mr. Harris: That is what we mean.

A. (Continued) And he spent considerable time dealing with the ice situation, and then he did go to the kettle.

By Mr. Behrens:

Q. Do you recall that then Judge Buffington nodded his head and made no further answer to the water kettle illustration, he seemed satisfied? A. I don't deny it, but I don't remember it.

Mr. Behrens: All right, that is all.
Mr. Harris: That is all.

ALMA H. STEEDLE, having been duly sworn, was examined and testified as follows: 4490

Direct Examination by Mr. von Holst:

Q. Please state your full name. A. Alma H. Steedle.

Q. And where do you live? A. 216 North Massachusetts Avenue, Atlantic City.

Q. And where did you live in 1936? A. 109 North Melbourne Avenue, Ventnor, New Jersey.

Q. You are the widow of former Referee Robert E. Steedle? A. I am.

Q. And in 1936 did he live—— A. Yes.

Q. —in Atlantic City at the same address you have given? A. Same address. 4491

Q. When did he die? A. May 12, 1936—'37, I mean, I beg your pardon.

Q. Did you ever meet J. Warren Davis? A. Yes, I did.

Q. When did you first meet him? A. On the occasion that he came to our house for—to take us for dinner.

Q. And was that before or after the Fox bankruptcy petition had been filed, if you know? A. After.

Q. Will you state how the engagement for dinner was made? A. Well, the telephone rang and I answered and it was Judge Davis, he said it was Judge Davis, and I had never met him before, so—I have known his voice, though,

because I had heard it over the phone before, and he invited us—he said he was coming down from Lawrenceville to take Mr. Steedle and I to dinner, and said that he would get there as soon as possible, he was then in Lawrenceville.

Q. Had there been any previous arrangements for that dinner? A. No.

Q. Was this the first that you—— A. Came as a complete surprise, yes. Mr. Steedle was out at the time.

Q. Mr. Steedle was out, and you answered the phone? A. Yes.

Q. Did you tell Mr. Steedle when he came in—— A.
4493 Yes, I did.

Q. —that Judge Davis had called—— A. Yes.

Q. —and said he was coming down? Now, will you state what happened that day after that telephone call? A. As events followed, you mean, from the time I told Mr. Steedle about the phone call?

Q. Yes. A. Well, I told him about the phone call and the invitation to dinner, and Mr. Steedle was very much upset and furious, because he was coming, said he wasn't going to go——

Mr. Harris: I move to strike that out, that Mr. Steedle was very much upset and furious and said he
4494 wasn't going to go.

The Master: Yes, I think we will strike that out.

A (Continued) All right; well, then, in course of time, the length of time it would take to get from Lawrenceville to our home, Mr. Davis and his daughter, Mary, arrived—Mary now is Mrs. Firestone, as you know—and Mr. Steedle and the Judge talked for a few moments, while the daughter and I talked about her coming wedding, which we had received an invitation to, about a month, it was a month, just about, before the wedding when they were at our house, and in a short time, maybe twenty minutes to a half an hour, we pro-

ceeded then, in their car, to the Hotel Shelburne, to the grille, for dinner.

By Mr. von Holst:

Q. Their car; you mean Judge Davis's car? A. Yes, Judge Davis's car. The daughter was driving it. And then you want me to proceed some more?

Q. Yes, just go right on. A. Well, then we had dinner, and the conversation was just sort of general, about his two sons, and we had a son whose ambition was Princeton, and that kind of conversation, there wasn't anything particular, 4496
I mean, nothing that I think you gentlemen would be particularly interested in, and then after the dinner we proceeded out on the boardwalk and took a short walk.

Q. Who were you walking with? A. Judge Davis.

Q. And your husband was walking with whom? A. Well, I don't know how, but, anyhow, I was left with Judge Davis, at which I was rather curious, never having met him before, and didn't know what to talk to him about.

Mr. Harris: Well, I move to strike out about the lady being furious.

The Master: I thought she said "curious."

Mr. Harris: Oh, curious? 4497

The Witness: No, I say I was rather curious as to why I was left alone with Judge Davis. Mr. Steedle walked with Mary—I will call her Mary Davis, at that time—and my young son, that is about all, we walked a few squares, and Judge——

Mr. Harris: Go ahead.

The Witness: Judge Davis—of course, I was cautioned by Mr. Steedle before they ever came——

Mr. Harris: I move to strike out——

The Witness: —to be careful about what I said——

Mr. Harris: —that she was cautioned by Mr. Steedle.

The Master: Yes, I think what we are interested in is just what happened.

The Witness: Well, what I am interested in is the fact that I was—felt that I could have been "pumped" rather easily if I hadn't been on my guard.

Mr. Harris: Well, I move to strike that out.

The Witness: Now, you can strike all that out if you want to.

Mr. Harris: Nervous reaction—I think you under-
4499 stand something about the competency of evidence.

The Witness: Yes.

Mr. Harris: All right.

The Witness: There wasn't anything pointed about the conservation except that I was—the remark was made that Mr. Steedle was working very hard on the Fox-case.

By Mr. von Holst:

Q. Now, who made that remark?

By Mr. Harris:

4500 Q. Who made that remark? A. Judge Davis, because he and I were alone, I told you, and Mr. Steedle and Mary were ahead of us.

By Mr. von Holst:

Q. Yes. A. And then I don't remember exactly, but I know that I steered the conversation into something else, and a short time after that a chair ride was suggested.

Q. By—— A. By Judge Davis, and then he and Mr. Steedle got in one chair and Mary and my son and I got in another, and proceeded down the boardwalk. There was

just a general conservation between the daughter and I about her coming wedding.

Q. And then after the boardwalk was over, what happened? A. Well, then we drove back to the street where the car was parked, at the Shelburne Grille, you know, the Shelburne Hotel, and got in their car and they drove us back to our home.

When we got there, we got out and went in the house, and they drove on.

Q. Now, about when was this, to the best of your recollection? A. Well, Mary's wedding was the 22nd of August, and it was about a month before that. 4502

By Mr. Harris:

Q. 1936? A. Yes, I should say in the latter part of July.

By Mr. von Holst:

Q. Now, did you ever see Judge Davis on any other occasion than that? A. At the wedding, after that, at the wedding.

Q. And where? A. In Lawrenceville.

Q. Except for those two occasions did you ever see Judge Davis? A. No. 4503

Q. Now, did you ever answer the telephone when Judge Davis was on the other end? A. Yes.

Q. How many times? A. That I couldn't remember, many times, but I know there were times when it was Judge Davis, at least, he said it was, and asked for Mr. Steedle, and I called Mr. Steedle to the phone.

Q. Now, the first of these phone calls, if you remember, was before or after the bankruptcy petition was filed? A. It was after the bankruptcy was talked in our home, about it going through Mr. Steedle's hands, I know that, but I can't tell you the exact date.

Q. Well, the bankruptcy petition was filed on May 29th. A. 1936.

Q. 1936. Would you say that your first phone call from Judge Davis was before or after that, if you know? A. I think I would safely say it was after that, but I couldn't be sure. Sometimes people would ask for Mr. Steedle and I wouldn't ask for the name, I would just call him to the phone.

Q. Now, do you recall Mr. Steedle's behavior——

Mr. Harris: Whose behavior?

4505

By Mr. von Holst:

Q. —when you called him to the phone——

Mr. von Holst: Just a minute.

Mr. Harris: Whose behavior?

Mr. von Holst: Mr. Steedle's behavior.

By Mr. von Holst:

Q. —when you called him to the phone, and he answered it? That is to say, I want you to state, if you will, his immediate statement to you on hanging up the phone.

4506

Mr. Harris: Which call was that, the first one?

Mr. von Holst: On the first occasion.

Mr. Harris: Now, I object to that.

Mr. von Holst: Now, I would like——

Mr. Harris: —irrelevant and immaterial.

Mr. von Holst: —to argue that point, if the Master please. I am fully aware of the hearsay rule,——

The Master: Yes, I would like to hear you on that.

Mr. von Holst: —but I believe there is a well-recognized exception to the hearsay rule, which comes

under the general heading of res gestae. I know also that res gestae is a much abused principle, and that there cannot be said to be any strict uniformity of decision upon what is comprehended by the doctrine, but I believe it is well established that an immediate reaction, an immediate remark, without pause to think and form conclusions, has been accepted as part of the res gestae in many cases, if I may recall to Your Honor the cases, like this, where a foreman of an excavating gang, that is watching the work—I know this is a reported case, I can't re- 4508
call which it is—and there is a slide, a dirt slide that comes down and buries somebody, and then there is an action afterwards as to whether that was negligence, and a bystander's statement that the foreman, at the time of the slide, while he was looking at it, said, "I knew that would happen",——

The Master: Yes, I am very familiar——

Mr. von Holst: —has been accepted in evidence.

The Master: I am very familiar with the principle. I have argued a case on that myself.

Mr. von Holst: Yes, I think we all have at one time or another.

The Master: Now, the question is—— 4509

Mr. von Holst: I believe that if Steedle on hanging up the phone made some remark that was indicative of his state of mind, before he had time to consider, before he had time to draw any conclusion, that that is competent evidence, and it is that question that I am putting to the witness.

Mr. Harris: Now, of course, the res gestae rule which you have just cited occurs when one is seeking to hold the principal of an agent, as in the case of the slide. Now, I remember another case, where a street car motorman, right after an accident, said,

"I knew these brakes, I told them these brakes wouldn't hold," but that is an attempt to show notice to the principal or to hold the principal responsible, and to prove the negligence of the principal through these involuntary, honest, hearsay statements of the agent. I don't think it has ever been applied except where you are attempting to hold someone responsible for the remarks of his own representative or agent.

But even assuming that the res gestae rule could be extended to cover this situation, and were not limited to agents, it clearly could not apply unless you

4511 know what it is applying to. Now, we don't know what Judge Davis said to Mr. Steedle. Maybe Judge Davis said to him, "I am going to sue you for ten million dollars", or maybe Judge Davis said to him, "I don't like the company you keep", and maybe he said to him any number, any variety of things which you can imagine, and, therefore, Mr. Steedle's—even if it is Judge Davis, which we don't know—Mr. Steedle's reaction to what Judge Davis said is wholly incompetent, unless we know what it was a reaction to. That is uncontroversial.

Mr. von Holst: That, I submit,——

4512 Mr. Harris: And, besides, the res gestae rule does not apply to reactions, to remarks made by other people, it only relates to conditions and physical things that the agent knows about, that the person speaking knows about.

The Master: Well, as I understand the res gestae rule, which I believe the text writers prefer to call the "spontaneous exclamation rule",——

Mr. Harris: That is right.

The Master: ——it refers to any exclamation which bears upon a fact which has just at the moment happened, and the exclamation is sought to be really

spontaneous and drawn out of the witness—it might be a bystander—by reason of the circumstances.

Mr. Harris: Now, Your Honor, suppose——

The Master: It seems to me the real question here is whether Mr. Steedle's state of mind is a relevant fact. If it is, I think his exclamation upon hanging up the phone would be evidence of it.

Mr. von Holst: I think the state of mind is a very relevant fact,——

Mr. Harris: Well, we don't know what the state of mind was applied to. 4514

Mr. von Holst: —because the proofs will show——

The Master: I would like to hear you on that point, Mr. von Holst.

Mr. von Holst: —entirely apart from the Steedle diary, the proofs already in show a "courting", shall I say, of this man Steedle by the Judge——

Mr. Harris: I deny that.

Mr. von Holst: —and by Mr. Kaufman—at least, that is a view of the evidence. Now, then, how did Steedle react to this, these phone calls, these unsolicited visits? Did he accept them as an ordinary circumstance, or did he immediately react adversely, 4515 because he felt that pressure was being exerted upon him, or he was being courted?

Mr. Harris: Well, we don't know——

Mr. von Holst: From that standpoint the state of mind is material.

Mr. Harris: We don't know if there was any pressure, and if so, what the pressure was about. Unless we know what Judge Davis said, certainly, the remarks of Mr. Steedle have no significance. You cannot just imagine that he said, "Now, I want you to favor my friend, William Fox, because I received or expect to

receive a bribe from him." You cannot just imagine that that is what he said, or create that impression.

Mr. von Holst: Of course, it is true that if Mr. Steedle were alive he could testify to what this phone call was and then his reaction to it. It would be more persuasive.

Mr. Harris: Well, if Mr. Lewis were alive that would be persuasive, too.

Mr. von Holst: If Judge Davis called Mr. Steedle, and Mr. Steedle's reaction was anger, it is a significant item of proof, taken in connection with all the
4517 other circumstances in the Fox case.

The Master: There is some evidence from several sources that Judge Davis exhibited an unusual interest in Mr. Steedle about the time the Fox bankruptcy proceedings began, and while I think there is much to be said for Mr. Harris's point of view, that not knowing what Judge Davis said, Mr. Steedle's frame of mind or state of mind would not be a relevant fact, I will receive the evidence as I have in other matters and reserve the decision as to whether it is material.

Mr. Harris: Well, now, your Honor, we don't even know that this was Judge at the other end of
4518 the wire.

The Master: I think Mrs. Steedle said so.

Mr. Harris: I don't think she did. She said she heard a voice. This is the first time he called her. How did she know it was Judge Davis?

By Mr. von Holst:

Q. I will ask you, how did you know it was Judge Davis on the other end of the line? A. You mean at the time he invited us to dinner?

Mr. Harris: No, no, at the time he is talking about.

By Mr. von Holst:

Q. I am talking about this telephone conversation before that. A. Before that, I don't know except he said it was Judge Davis.

Q. That is the voice at the other end of the line said, "This is Judge Davis"? A. Yes, and I know I heard that same voice more than once,——

Mr. Harris: Now, then,——

A. —and I could remember the voice, I mean.

4520

By the Master:

Q. Subsequently, when you were called from Lawrenceville and went to dinner with Judge Davis, was it the same voice? A. That was the same voice, and it was then that Mr. Steedle's reaction was very much upset.

Mr. Harris: I move to strike out——

The Witness: That is what I told you about.

Mr. Harris: I move to strike out about Mr. Steedle's reaction. You have already stricken it.

The Master: I will strike that out.

4521

By Mr. von Holst:

Q. Now, will you tell us what Mr. Steedle said when he hung up the phone?

Mr. Harris: Now, will you identify this, Mr. von Holst? Was this the first time that Judge Davis had called?

The Witness: No,—if you are asking me—it wasn't.

Mr. Harris: I thought the question was directed to the first time he called you up.

Mr. von Holst: She has now stated that it wasn't the first time.

Mr. Harris: You mean the one she is going to tell us about?

Mr. von Holst: That is right.

The Witness: Are you asking me about Mr. Steedle's reaction after the invitation to dinner that Sunday?

Mr. Harris: No.

Mr. von Holst: No, I am asking you for the occa sion which you have mentioned when the phone rang,
4523 you went to the phone, and he said, "This is Judge Davis," and you called Mr. Steedle to the phone.

The Witness: Well, there were several times, as I said before.

Mr. von Holst: Yes.

The Witness: And after the first two or three times, I remember particularly once he banged up the phone and says, "Oh, hell, I wish that man would leave me alone!"

Mr. Harris: Now, I move to strike out the answer as immaterial.

The Master: I will receive that under your ob-
4524 jection.

Mr. von Holst: That is all the direct.

Cross Examination by Mr. Harris:

Q. Mrs. Steedle, you say that Judge Davis called Mr. Steedle a number of times at your home. I want to advise you that that is contrary to other evidence in the case, and I want you to be very particular in telling me, if you can, and as accurately as you can just how many times Judge Davis did call Mr. Steedle, during the entire time that you are conscious of, no matter how far back or how far forward

it goes. A. Well, I know there was two or three occasions before the invitation to the wedding, and it was after the invitation to the wedding that he called from Lawrenceville to come down and take us to dinner.

Q. So that would be about three or four times—— A. Yes.

Q. —altogether? A. And then after that, after the wedding was over, he called on the phone a couple of times, one time the following February, when Mr. Steedle was very ill in bed, and talked to me quite—oh, I should say two or three or four minutes, as to Mr. Steedle's health, and was he very ill, and so on, and I told him he couldn't come to the phone. 4526

Q. Judge Davis—— A. He said he would call again.

Q. Judge Davis never said anything to you over the phone about the Fox case, did he? A. No.

Q. Or about any other case? A. No.

Q. And you, of course, haven't the slightest idea, of your own knowledge, as to what he said to Mr. Steedle on any of those occasions? A. No, I don't, I just know Mr. Steedle's reaction.

Q. Well, you have given us that, now. A. On that invitation to dinner, particularly.

Q. That has been stricken out. And over what period of time did these three or four telephone conversations occur? A. Well,—— 4527

Q. Beginning about when? A. From around about May, latter part of May.

Q. 1936? A. '1936, until Mr. Steedle died, the following May.

Q. There were two or three up to the time of the wedding,—which was in August, was it? A. No, I told you there was one in February, when Mr. Steedle was very ill, in bed.

Q. I understand, I am trying to place it. A. Yes.

Q. One was in the latter part of May? A. Yes.

Q. And then there were one or two in June and July, were there? A. Yes.

Q. And then the invitation to dinner? A. Yes.

Q. Which was in July? A. The invitation to the dinner, yes.

Q. Yes. A. Latter part of July.

Q. And then the wedding was in August? A. August.

Q. And then there were no more calls until the following February,—— A. None that I——

Q. —when he inquired about Mr. Steedle's health. A. That is right.

4529

Mr. Harris: That is all.

Mr. von Holst: That is all.

Mr. von Holst: Mr. Master, could we get the original Steedle diary out? The next witness is just going to identify that.

HIRAM STEELMAN, having been duly sworn, was examined and testified as follows:

4530 *Direct Examination by Mr. von Holst*:

Q. Please state your full name. A. Hiram Steelman.

Q. And where do you reside? A. I reside in Ventnor City. It is a suburb of Atlantic City.

Q. Were you appointed trustee in the Fox bankruptcy matters? A. I was.

Q. And who was the referee in that matter? A. Robert E. Steedle.

Q. Did you know Mr. Steedle in his lifetime? A. Yes.

Q. And he died in May, 1937, I believe? A. That is correct.

Q. I hand you a document that is marked Amici Exhibit 147 for identification and ask if you can identify that document.

(The witness examined the document.)

A. Yes.

By Mr. von Holst:

Q. When did you first see that document? A. I first saw it in the early fall of 1936.

Mr. Harris: May I see it, the original? Thank you, go ahead. 4532

By Mr. von Holst:

Q. Who showed it to you? A. Mr. Steedle.

Q. Where were you when he showed it to you? A. In his office, in the Schwemm Building, Atlantic City.

Q. Did you read the document at that time? A. My recollection is that Mr. Steedle read it to me, and I think that I afterwards examined it casually.

Q. When did you next see the document? A. After Mr. Steedle's death, in 1937, within a few days after he died.

Q. And how did you come to see it then? A. It was brought to my office by a Miss Richardson, who was Mr. Steedle's secretary, and handed to me by her. 4533

Q. Was the document then in an envelope? A. Yes.

Q. Now, have you the envelope with you? A. I have.

(The witness produced an envelope.)

By Mr. von Holst:

Q. And how did you come to get possession of this envelope? A. You mean now?

Q. Yes. A. Mr. Brown handed it to me yesterday.

4534 *Hiram Steelman—For Amici Curiae—Direct*

Mr. von Holst: If the Master please, the diary and the envelope in which it was, was before the three Masters.

The Master: Yes.

Mr. von Holst: The three Masters turned over to Mr. Brown the diary and apparently lost the envelope. Now they have found the envelope.

By Mr. von Holst:

Q. Do you identify this envelope that you have in your
4535 hand as the envelope in which the document to which you have been testifying was inserted at the time it was turned over to you after Mr. Steedle's death? A. I believe it is the same envelope.

By Mr. Harris:

Q. That is your recollection? A. Pardon me?

Q. You say you believe it is; is it? A. Yes, it is my recollection.

Mr. von Holst: We ask that this be marked for identification as Amici Exhibit 149.

(Envelope which contained the Steedle diary
4536 was marked Amici Exhibit 149 for identification.)

By Mr. von Holst:

Q. When you received this document in the envelope was the envelope opened or sealed? A. It is my recollection that the envelope had been opened.

Q. And was there anything around the envelope? A. I don't recall.

Q. You don't recall whether there was a rubber band around it? A. I do not.

Q. When this instrument was delivered to you as you have stated, after Mr. Steedle's death, did you read the document? A. Yes, sir.

Q. Can you state whether or not it was then in the same condition as when you saw it in the fall of 1936? A. So far as I can recall it is in the same form as it was at that time, that I had had it read to me by Mr. Steedle.

Q. When Mr. Steedle read it do you recall whether it was clipped in the upper lefthand corner? A. No, I do not.

Q. After this document was delivered to you, after Mr. Steedle's death, what did you do with it? A. I retained it, reported to Mr. Brown that it was in my possession, and later delivered it to him. 4538

Q. Did it come back into your possession at any time since then? A. Yes, sir.

Q. When? A. It was delivered by Mr. Brown to me at the time of the hearing in Philadelphia before the Masters, at the inquiry that was being conducted, and I produced it at that time.

Q. That was just this year, was it not? A. Yes.

Q. And you produced it and then it was retained by the Masters, was it? A. That is correct—well, I presume——

Q. I mean, so far as you know? A. So far as I know, yes. 4539

Q. And you haven't seen it since that time until this morning? A. That is correct.

Mr. von Holst: That is all the direct.

Mr. Harris: No examination.

(Discussion off the record.)

Mr. Harris: Now, Your Honor, referring to the minutes of the second criminal trial, volume 1, we will not deny, subject to our objection as to material-

4540

ity and relevancy—which objections we make very strenuously—that Mr. Herman A. Meitin, if called would testify to the matters set forth in said volume 1 of the transcript of the second criminal trial, from page 321, as follows—you want to put it in the record, anyway.

Mr. Thiess: Yes, as follows.

Mr. Harris: We will transcribe the whole thing.

Mr. Thiess: That would be better.

Mr. Neuman: Better tell Mr. Rodebaugh we have already typed that and he can just insert it bodily

4541

as pages.

Mr. Harris: All right—I don't know whether you have typed the thing complete or not. Have you?

Mr. Thiess: Yes, it is a carbon copy of that.

Mr. Neuman: Including the cross.

Mr. Harris: Remarks of counsel and everything?

Mr. Neuman: Everything.

Mr. Harris: And that—let me just go on; who is the next witness?—and that W. M. Pike if called would testify as follows——

The Master: Are you going to say—and counsel would remark as follows?

4542

Mr. Harris: Oh, yes, I can put that in when I get to it—and that A. C. Pritchard if called would testify as follows; and that E. E. Seiwell if called would testify as follows.

(Discussion off the record.)

Mr. Harris: Included in the testimony would be objections, remarks of counsel and Court, of course, and I assume that exhibits offered and received—do you want those exhibits in?

Mr. von Holst: Oh, yes.

Mr. Harris: —may subject to our objections be received in this proceeding. Such exhibits are num-

bered in the second criminal trial and in this proceeding, respectively, as follows.

In making this agreement, Your Honor, I want to make it abundantly clear that we do not think any of this testimony is relevant or material so far as our client is concerned, and the agreement is made upon condition and with the understanding that it is not claimed by counsel for the Amici that any part of this testimony proves or tends to prove, nor is it claimed that any part of this testimony proves or tends to prove that any money was delivered or 4544
claimed to have been delivered to Morgan S. Kaufman by William Fox, so far as this testimony is concerned,——

Mr. von Holst: If the Master please,——

Mr. Harris: —or anyone on behalf of Fox to Kaufman, or anyone on his behalf.

Mr. von Holst: When he says "tends to prove or proves", I may agree that the testimony of these witnesses relates to the bills that went from Fox, according to his story, directly to Davis, but I do not wish to preclude ourselves from saying that that may have bearing upon Fox's other testimony that he delivered fifteen thousand dollars to Kaufman for Fox. 4545

Mr. Harris: For Davis.

Mr. von Holst: For Davis; with that amendment.

Mr. Harris: I make the stipulation with the understanding that you are not arguing that from this testimony itself; there is nothing in this testimony which touches on that subject.

Mr. von Holst: I am willing to stipulate the fact, but I am not going to stipulate the extent of argument that we can make.

Mr. Harris: Well, I want——

4546 *Colloquy*

Mr. von Holst: For instance, I would like to call to the Master's attention that in the three-Masters proceeding, Masters Ringe and Swartz, the majority, held that the testimony of the bank witnesses as to the actual tracing of the twelve thousand, five hundred —that is to say, the five $1000 bills of the twelve thousand, five hundred—in their view corroborated Fox's testimony and refuted Kaufman's testimony as to the other fifteen thousand which Fox testified he gave to Kaufman.

4547 The Master: Well, as I understand Mr. Harris, he wants it understood that there is no claim that this particular money—how much was it?

Mr. von Holst: Twelve thousand, five hundred.

The Master: —twelve thousand, five hundred dollars was in any way handled by Kaufman——

Mr. von Holst: That is right.

The Master: —or through Kaufman, and that you do not intend to argue that it was.

Mr. von Holst: That is right.

Mr. Harris: Well, now,——

4548 The Master: But you may argue that because Fox and Davis entered into this corrupt transaction they may have—it is more probable that they entered into the other——

Mr. von Holst: That is right.

The Master: —through Mr. Kaufman. That is, I believe, your position.

Mr. Harris: Of course, I do not concede that, because I do not regard it as competent or material or relevant for the purpose of proving that.

The Master: I understand.

Mr. Harris: But, of course, I do not preclude counsel on the other side from arguing that because Fox gave some money directly to Judge Davis, he was

the kind of man who tried to do the same thing through some agent.

The Master: Yes.

Mr. Harris: I want it clearly understood that there isn't anything here from which you can draw the conclusion or fact that money was delivered to Mr. Kaufman by Fox for Judge Davis.

Mr. von Holst: By "here", you mean in the testimony of these witnesses?

Mr. Harris: In the testimony which I have stipulated.

4550

Mr. von Holst: That is all right.

Mr. Harris: That is all right. Well, that saves three or four days.

The Master: Yes.

Mr. Thiess: Well, now, let me ask,——

(Discussion off the record.)

The Master: Well, I suggest to counsel if you can get hold of the Marshal and have him subpoena Fox for some early date, before he goes to Lewisburg, it would save a good deal of time.

(Discussion off the record.)

4551

———

(Recess, 11:40 until 2:00 P. M.)

———

(Counsel subsequently agreed that the stipulated testimony of the witnesses Meitin, Pike, Pritchard and Seiwell should be transcribed into this record, and that after the exhibit numbers in that testimony the corresponding exhibit numbers in this proceeding should be inserted.)

(A transcript of the stipulated testimony of H. A. Meitin follows:)

"HERMAN A. MEITIN, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gahagan:

Q. What is your occupation, Mr. Meitin? A. At the present time I am assistant cashier of the St. Augustine National Bank at St. Augustine, Florida.

Q. What position did you hold in March of 1937? A. I was head teller at the St. Augustine National Bank at that time.

4553 Q. And in April of 1937? A. I still was head teller.

Q. And as head teller what were your duties at the St. Augustine National Bank in St. Augustine, Florida? A. I was in charge of the first cage, supervised all the currency in the bank, had charge of the currency in the vault, supplied the other tellers with currency, ordered currency, shipped currency, and also at that time I posted the general books.

Q. When you said you were in charge of the currency, would you go into that in somewhat more detail, sir? A. Well, going into detail in that matter, when tellers were short of currency they would order currency from me, and I would ship currency to them. If I had too much currency

4554 in the bank we would ship currency to the Federal Reserve Bank.

Q. And you were in charge of those transactions; is that right? A. Yes, sir.

Q. I ask you whether or not you had an account in the name of Roger S. and Mary D. Firestone at the St. Augustine National Bank, Florida, in April of 1937?

Mr. Gray: Just a moment. I desire to object, if Your Honor please. The ground of my objection is this, and I am taking objection on behalf of the de-

fendant Judge Davis: I, of course, heard, as Your Honor did, the opening of the District Attorney, and he stated what he intended to prove with respect to funds in the St. Augustine National Bank. I am objecting to his proving it at this time because I believe it is very much out of order. I think that before he can go into any of the proof that he sets forth as things that he intended to establish for the purpose of corroborating—that is the way he put it—Mr. Fox's testimony, that it would be necessary that he establish at least some sort of prima facie case of conspiracy 4556
before he can go into the things that were done.

The Court: The question may be answered and the exception of the defendant may be noted.

Mr. Gallagher: Now, if Your Honor please, on behalf of the defendant Kaufman——

The Court: You are objecting on behalf of your client?

Mr. Gallagher: Yes, Your Honor.

The Court: The exception of the defendant Kaufman may be noted. Proceed.

Mr. Gray: May we ask, if Your Honor please, respectfully, because it may save a lot of time, whether Your Honor is basing that upon the theory 4557
that it is not necessary, as I suggested, that a conspiracy be shown, or simply because of this one question, because if you are basing it and would put your reasons on the record for that reason, then, of course, we need not make any other objection, but otherwise we may have to make objections to the other questions.

The Court: I take as one only of my supports for the ruling that I make the right of a trial judge to direct the order in which he will receive evidence.

Mr. Gray: Yes, sir.

The Court: I am not saying that the ruling rests solely upon that discretionary right, however, on the part of the Judge.

Mr. Gahagan: (Addressing the reporter.) Will you read the question?

(The question was repeated by the reporter as follows:

"Q. I ask you whether or not you had an account in the name of Roger S. and Mary D. Firestone at the St. Augustine National Bank, Florida, in April of 1937?")

4559

A. Yes, we did.

By Mr. Gahagan:

Q. And I show you——

Mr. Gahagan: I should show that to Mr. Gray first.

The Court: I think you should.

Mr. Gahagan: May I ask if I might show all the papers to Mr. Gray now, sir?

The Court: And to Mr. Gallagher and to all counsel.

4560

We think, gentlemen, that while those papers are being looked at we might as well take a short afternoon recess of ten minutes, five of which you may devote to examination of papers if you want to.

(A ten minute recess was taken.)

By Mr. Gahagan:

Q. Mr. Meitin, I ask you whether or not there was an account at the St. Augustine National Bank, St. Augustine, Florida, in the name of Mr. Roger S. and Mrs. Mary D. Firestone in the year 1937, and I refer to the month of April, 1937. A. Yes, sir, there was.

Q. I show you a card and ask you if you can identify that, sir. A. This is the original signature card of an account opened March 4, 1937, in the name of Roger S. Firestone and Mary D. Firestone.

Mr. Gahagan: I offer this in evidence, sir.
The Court: It may be received.

(The card referred to was received in evidence and marked Government's Exhibit 4.) (Amici Exhibit 150)

By Mr. Gahagan: 4562

Q. In April of 1937 did your bank keep a record of the deposits and withdrawals of clients of the bank? A. Yes, sir.

Q. And what records did the bank keep? A. Well, we have a Recordak system that we take a picture of every check that comes into the bank. Checks at the end of the month are mailed to the depositor along with the picture and their statement for that month, called a Recordak picture.

Q. And do you have such a Recordak picture for the account of Roger S. and Mary D. Firestone? A. Yes, sir, we do.

Q. I show you a card and ask you if you can identify 4563
that card. A. Yes, sir. This is the Recordak picture of the account of Roger S. and Mary D. Firestone for the month of April 1, 1937.

Q. I would like to have you explain a little bit more in detail exactly what a Recordak is. A. Well, a Recordak is a machine that takes pictures of all records that come into a bank—as a matter of fact, records of any business. It will take pictures, probably as many as five hundred in five minutes, as fast as you can throw a check or a statement into the machine.

4564 *Herman A. Meitin—For Amici Curiae—Direct*

Q. Then they are run up on films. A. That is right, and the film is kept in the bank, and any time they want a picture from a film, the picture is developed from the film.

Q. And this card that I have shown you is the development of one of the films? A. Yes, sir.

Mr. Gahagan: I offer this in evidence.

The Court: It may be received.

(The card referred to was received in evidence and marked Government's Exhibit 5.) (Amici Exhibit 151)

4565

By Mr. Gahagan:

Q. And in addition to the Recordak do you maintain deposit slips at your bank? A. Yes, sir, we maintain the original deposit slips.

Q. I show you another piece of paper and ask you what that is, sir. A. This is an original deposit slip of Mary D. Firestone, dated April 14, 1937, for five thousand dollars.

Mr. Gahagan: I ask that that be marked in evidence as Exhibit 6. (Amici Exhibit 152)

The Court: It may be received.

4566 (The deposit slip referred to was received in evidence and marked Government's Exhibit 6.) (Amici Exhibit 152)

By the Court:

Q. That is a portion of the permanent, regular records of the bank? A. Yes, sir.

By Mr. Gahagan:

Q. And these Recordak records kept in the regular course of the business of the bank? A. Yes, sir, every day.

Q. They are the records you rely on in transacting your transactions? A. Yes, sir.

Q. Would you examine Government's Exhibit 5, (Amici Exhibit 151) the Recordak picture of the statement, and state whether or not there is a deposit appearing on that account which coincides with the deposit ticket of five thousand dollars for April 14, 1937? A. Yes, sir, it does; it shows five thousand dollars on April 14, 1937.

Mr. Gahagan: May I show these to the jury, sir?

(Mr. Gahagan handed the exhibits to the jury.)

By Mr. Gahagan:

4568

Q. And in what column would the deposit be on this card, Government's Exhibit 5? (Amici Exhibit 151). A. On the second column under "Deposits."

Q. There are no entries either before or below it; is that right? A. That is right, sir.

Q. Now, do you know Mary D. Firestone? A. Yes, sir.

Q. Were you present when that deposit of five thousand dollars was made? A. Yes, sir, I took it in myself.

Q. Would you state to the jury everything that occurred at that time?.

Mr. Gray: If Your Honor please, that question I am objecting to because of the fact that it is something that happened between this witness and Mary D. Firestone, who is not shown to be connected with this case in any way, shape or form. 4569

The Court: I will receive the evidence, in the light of the opening which we have heard and upon the assumption that evidence of the character referred to in the opening will be forthcoming. Your exception may be noted. The exception of Mr. Kaufman may also be noted.

Mr. Gray: May I make it a point that my objection, if Your Honor please—I am not going to argue the matter, but I want to make it a part of my objec-

tion that when these matters are allowed to come in, and the District Attorney—because it frequently happens—does not prove those things that he says he is going to prove in his opening, they are, of course, quite prejudicial to the defense, notwithstanding the fact that Your Honor might entertain and grant a motion to strike them out. I want to state that as part of my objection.

The Court: Yes, I appreciate that. I will receive the evidence.

4571 Mr. Gallagher: If Your Honor please, what we had in mind with respect to the question now asked is that it may be an attempt upon the part of the prosecutor to develop a conversation held by this witness with Mary Davis Firestone.

Mr. Gahagan: There is no such suggestion, sir, and I do not wish this witness to state anything that he heard Mary Firestone did, but just what he performed in the operation of his duties.

The Court: You may restrict the evidence to that if you want to.

Mr. Gahagan: May I proceed, Your Honor?

The Court: Yes, sir.

4572 *By Mr. Gahagan:*

Q. Would you continue and tell what happened with respect to this deposit of five thousand dollars in that account, and please eliminate any conversation that you had with Mary Davis Firestone? Tell exactly what you did in your duties. A. At that time I was in the first window. Mrs. Firestone called at the bank——

Q. I can't quite hear you, sir. Pardon me. A. I was in the first cage at the bank, the St. Augustine National Bank. Mrs. Firestone called, handed me a deposit slip made out in her handwriting for five thousand dollars, which deposit was

five one thousand dollar bills at the time. I entered it in her passbook, made a notation on the deposit slip that it was currency.

Q. May I just ask you to point out what there is on this deposit slip that indicates it was currency, sir? A. The pencil mark straight down the deposit slip indicates it is currency. If it had been a check, we would have a transit number on the deposit slip showing the bank and the state it was drawn.

Q. What did you then do, sir? A. I placed the currency in my locker, in the case there—drawer. Mrs. Firestone requested at that time that I issue her a cashier's check for 4574
four thousand dollars, which I did.

Q. I show you a paper and ask you what that is, sir. A. This is a cashier's check on the St. Augustine National Bank, number 43508, dated April 14, 1937, payable to Pinellas Groves, Inc., for Four thousand dollars. I went back and issued this check to Mrs. Firestone and had Mr. Pellicer, the cashier of the bank, sign it; then I handed it to Mrs. Firestone. In receipt, she gave me a check on her account for four thousand dollars.

Q. I show you this paper and ask you what that is, sir. A. This is a check dated April 14, 1937, payable to the St. Augustine National Bank, for four thousand dollars, signed 4575
"Mary D. Firestone". On the lefthand side of the check it says "For Pinellas Groves, Inc.". She handed me the original of this picture in payment of the cashier's check.

Q. When you say "picture", this is the Recordak? A. Yes, sir, of her check.

Q. What was done with the original check? A. That was mailed to Mr. and Mrs. Firestone at the end of April 1937.

Q. And in the event the original checks are lost, these records are relied upon? A. Yes, sir.

Q. And they are kept as the regular course of the records of the business in the bank? A. Yes, sir.

4576 *Herman A. Meitin—For Amici Curiae—Direct*

Mr. Gahagan: I offer the cashier's check and the check for four thousand dollars. The cashier's check will be Exhibit No. 7 (Amici Exhibit 153) and the check for four thousand dollars to the St. Augustine National Bank is Exhibit No. 8 (Amici Exhibit 154).

(The checks referred to were received in evidence and marked Government's Exhibit 7 (Amici Exhibit 153) and Government's Exhibit 8) (Amici Exhibit 154).

4577 *By Mr. Gahagan:*

Q. And then I show you another piece of paper and ask you what this piece of paper is, sir. A. This is a Recordak picture of a check dated April 14, 1937, payable to Kathryn C. Page for $1,000, signed Mary D. Firestone.

Q. What was done with the original of that check? A. That was mailed to Mr. and Mrs. Firestone at the end of April, 1937.

Q. And is this record, is this card kept in the regular course of the business of the bank? A. Yes, sir.

Q. The film from which this picture was made, is that
4578 right? A. Yes, sir.

Mr. Gahagan: And I now offer, Your Honor, the Recordak of check for $1,000 to Kathryn C. Page as Exhibit No. 9 (Amici Exhibit 155).

The Court: It may be admitted.

(Recordak picture of check dated April 14, 1937, payable to Kathryn C. Page, in the amount of $1,000, signed Mary D. Firestone, was marked Government's Exhibit No. 9) (Amici Exhibit 155).

By Mr. Gahagan:

Q. Now, I ask you whether or not on Government's Exhibit 5, (Amici Exhibit 151) the Recordak of the bank statement of Roger and Mary Firestone, there appears withdrawals of $5,000 and $1,000, sir. A. $4,000 withdrawal is shown as paid April 14, 1937, and $1,000 withdrawal is shown as paid April 19, 1937.

Q. Is there any other $1,000 item on that card, sir? A. No, sir.

Q. Is there any other $4,000 item on that card, sir? A. No, sir. 4580

Mr. Gahagan: May I show these to the jury, sir?

The Court: Certainly.

Mr. Gahagan: A check to Pinellas Groves in the amount of $4,000, a cashier's check signed by Pellicer, the cashier of the bank. That check is drawn on the St. Augustine National Bank.

Another check drawn to the St. Augustine National Bank at that bank, on that very same bank, in the amount of $4,000 bearing the notation in the left-hand corner, for Pinellas Groves, Inc.; and a third check to Kathryn C. Page drawn on the St. Augustine National Bank on the same date, April 14, 1937, in the amount of $1,000. 4581

Mr. Gray: If your Honor pleases, we made no objection to the admission of the exhibits following the witnesses' testimony, thinking that Your Honor's ruling was intended to cover those, also. If I am not right, sir, I should like to note an objection on the record to the admission of the exhibits. In other words, our first objection was directed to all of the testimony that this witness may give plus these exhibits, but I didn't specifically refer to that.

The Court: The general objection you made may be deemed applicable to the papers subsequently put in, but no specific objection is now open to you. In

4582 *Herman A. Meitin—For Amici Curiae—Direct*

the event that upon an examination of the record you should think there was a possibility that some of these though material in substance, may not be duly authenticated——

Mr. Gray: No, we do not desire to raise and have not raised an objection as to any of the exhibits that have been so far offered on the question of authenticity. We wanted to be sure they came within Your Honor's ruling as well as the verbal testimony.

The Court: They may be so regarded. But no such objection as that, a picture taken from a Re-
4583 cordak film which is secondary evidence, if you please —nothing of that sort is now open to you.

Mr. Gray: We made no such objection.

The Court: All right. I am not intimating that such an objection, if made, would be sustained, especially in view of the statute of June, 1936.

Mr. Gahagan: I want the jury to have an ample opportunity to examine this, Your Honor.

The Court: Certainly.

By Mr. Gahagan:

Q. I show you another piece of paper and ask you what
4584 that is, sir. A. This is a sheet out of the draft register where all cashier's checks—records are made of all cashier's checks issued.

Q. Can you tell me whether or not the cashier's check of $4,000 appears on there, sir? A. Yes, sir. It appears dated April 14, 1937, payable to the order of Pinellas Groves, Incorporated, purchase by Mary Firestone, payable April 21, 1937.

Q. And that is part of the regular records of your bank? A. Yes, sir, this is an original record.

Mr. Gahagan: I don't think it is necessary to offer that, sir. It is just a duplication of the check that they have there.

The Court: Very well.

By Mr. Gahagan:

Q. Now, you say you received the $5,000 in what currency, sir? A. Five $1,000 bills.

Q. And what did you do with the five $1,000 bills? A. I placed them in a drawer in my cage at that time.

Q. And what happened to them, sir? A. Well, that night 4586
I placed them in my locker in the vault, and either the next day or the day after, shipped them to the Federal Reserve Bank, which is our custom——

Q. Before you come to your custom, did anyone else have access to that vault, sir? A. To the vault, yes sir.

Q. Who was in charge of the cash? A. I was.

Q. Who was responsible for the cash in the vault? A. I was.

Q. Would anyone going in there take any cash out without informing you, sir? A. No, sir.

Mr. Gray: That is objected to.

The Court: That is excluded as a question. 4587

By Mr. Gahagan:

Q. Was this a usual or an unusual transaction for you at that bank?

Mr. Gray: Will Your Honor strike the answer to that question from the record?

The Court: Oh, yes. I excluded the question and with the question out, the answer goes out, too. Indeed, I am not sure that I heard any answer.

4588 *Herman A. Meitin—For Amici Curiae—Direct*

Mr. Gray: We heard one, we didn't know what it was.

The Court: The question and answer are out.

By Mr. Gahagan:

Q. When you put the five $1,000 bills, where did you put them, sir? A. In my locker in the vault.

Q. In your locken? A. Yes, sir.

Q. Who has access to your locker? A. No one else but me.

4589 Q. Only you? A. Yes, sir.

By the Court:

Q. Let me see if I understand that. Others may get into the vault? A. Yes, sir.

Q. Others may not get into your locker? A. That is right. They have several lockers there, and each teller has one to place his currency in.

The Court: All right.

By Mr. Gahagan:

Q. You, alone, have the key to that locker? A. Not a
4590 key, a combination.

Q. I see, a combination? A. Correct.

Q. You are responsible for the cash in that locker? A. Yes, sir.

Q. I was about to ask you the question of whether or not the deposit of $1,000 bills in your bank was a usual or an unusual occurrence for your bank during that period.

Mr. Gray: That is objected to, Your Honor.

The Court: That is for the purpose, if the answer is that it is unusual, of making it probable that he would remember such a transaction?

Mr. Gahagan: That's right, sir.

The Court: I am going to put the responsibility upon you. If you press the question, I shall rule in your favor.

Mr. Gahagan: I will take the responsibility, sir.

The Court: I am not indicating that that is serious. I will receive the answer.

By Mr. Gahagan:

Q. Was it a usual or an unusual transaction?

Mr. Gray: May we have an exception on the record? 4592

The Court: Oh, yes, each defendant has an exception.

A. That is an unusual transaction.

By Mr. Gahagan:

Q. That is a what? Q. An unusual transaction.

Q. Unusual? A. Yes, sir, for a small bank, I would say.

Q. And what did you do, then, with the five $1,000 bills that you said you shipped? Will you describe what you did at that point, sir? A. I placed them with other currency in a bag, made the declaration to the Federal Reserve Bank, which was signed by me and Mr. Harold, the vice president of the bank, carried to the post office, received a registered receipt and mailed it to the Federal Reserve Bank at Jacksonville. 4593

Q. And when you say you made a declaration, what do you mean by that, sir? A. There is a book furnished by the Federal Reserve Bank that we have to fill up in triplicate when shipping currency to the Federal Reserve Bank.

Q. And what is done in shipping currency to the Federal Reserve Bank? What records are made out by you? A.

The original of this record is mailed to the Federal Reserve Bank under separate cover. The duplicate——

Q. When you say under separate cover, what do you mean? A. In a separate letter, in a separate envelope. The duplicate is placed with the currency and shipped with the currency to the Federal Reserve Bank, and the triplicate is kept for the records of the bank.

Q. And all three of these papers originate with your bank? A. Yes, sir.

Q. I show you a book and ask you what that book is, sir.
4595 A. This is an insurance declaration book furnished by the Federal Reserve Bank at Atlanta. We ship to the Federal Reserve Bank at Jacksonville, which is a branch bank of Atlanta.

Q. That is a little bit fast for me. Will you say that a little bit slower, please? A. That is an insurance declaration book furnished by the Federal Reserve Bank of Atlanta, but instead of shipping to Atlanta we ship to the Jacksonville Branch at Jacksonville.

Q. The book is furnished by the Atlanta Federal Reserve? A. Yes.

Q. But you ship to Jacksonville, which is a branch of the Atlanta Federal Reserve, is that it? A. That's right.

4596 Q. And can you identify the declaration that was made out in the shipment concerning these five $1,000 bills? A. Yes, sir. I have a declaration number 232025; the date on it is April 16, 1937; it contained currency of $15,750; postage and surcharge amounted to $2.42, signed by Mr. Frank F. Harold, vice president of the bank, in two places, and signed by me in two places. The officers sending it verified the amount of cash shipped. He verifies it when it is shipped with strap numbers, not each individual piece of currency.

Q. And who puts the cash into the bag? A. I did.

Q. And then you fill the bag? A. Yes, sir.

Q. And it is verified before it is shipped by an officer of the bank who signs the declaration? A. That's right.

Q. And this white piece of paper, which one is that of the declarations in triplicate? A. That is the original which is mailed in a separate envelope to the Federal Reserve Bank at Jacksonville.

Q. And this particular paper originated with your bank, is that right, sir? A. That's right.

Q. Does it bear your signature? A. Yes, sir, in two places.

Q. Where, sir? A. At the bottom of the sheet in two places. 4598

Mr. Gahagan: I offer this in evidence, sir.

The Court: It may be received.

(White original of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville was marked Government's Exhibit 10.) (Amici Exhibit 156).

By Mr. Gahagan:

Q. I show you a yellow piece of paper and ask you what that is, sir? A. That is a duplicate, it is a carbon copy of that original white sheet there. 4599

Q. All written at the same time? A. Yes, sir.

Q. And what is done with that? A. This is placed with the currency and shipped to the Federal Reserve Bank at Jacksonville.

Q. In the currency shipment, itself? A. Yes, sir, with the exception the postage doesn't show on this yellow one, we don't place the postage on the duplicate slip for the reason that this is already placed in the currency when it arrives at the post office, and that is the only exception that isn't on the slip. The postage is also placed on the triplicate, but it is

4600 *Herman A. Meitin—For Amici Curiae—Direct*

not on the yellow slip except when the Federal Reserve Bank places it on there when it arrives in Jacksonville.

Q. Because when you find out what the postage is, this is already in the bag being shipped, is that right? A. That's right.

Mr. Gahagan: Now, I offer this yellow declaration in evidence, sir.

The Court: It may be admitted.

4601 (Yellow copy of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville was marked Government's Exhibit 11.) (Amici Exhibit 157).

By Mr. Gahagan:

Q. And the pink copy which is contained in the book, is this kept as part of the records of your bank, sir, this book? A. Yes, sir.

Q. And the yellow copy which has already been received in evidence, that bears, likewise, the carbon copy of your signature, doesn't it? A. That's right, sir.

Q. And the pink one, as well? A. Yes, sir.

4602 Mr. Gahagan: And I offer this page in the book, sir.

The Court: It may be received.

(Pink copy of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville was marked Government's Exhibit 12.) (Amici Exhibit 158.)

Mr. Gahagan: May I show these to the jury, sir?

The Court: Certainly.

Mr. Gahagan: The Federal Reserve Bank, Jacksonville, Florida, 4/16/36. St. Augustine, Florida,

one package currency, $15,750, signed H. A. Meitin.
H. A. Meitin.

By Mr. Gahagan:

Q. And what is the name of the other man, sir? A. Frank F. Harold.

Mr. Gahagan: (to the jury) Frank F. Harold.

By Mr. Gahagan:

Q. And these three papers which the jury are now examining—they are all made up in triplicate; is that right, sir, at the same time? A. That is right. 4604

Q. And you rely upon those records in the event of loss in shipment? A. Yes, sir, we do.

Q. Now, I noticed in the book of insurance declarations there was a slip of paper such as the one I am handing you, and I ask you what that slip of paper is, sir (handing paper to witness). A. This is a receipt for registered shipments made up in the post office. This is number 5094 covering a shipment of $16,000 dated April 16, 1937, shipped to the Federal Reserve Bank in Jacksonville.

Q. Now, you say $16,000—what date is that, sir? A. April 16, 1937.

4605

Q. Now, there is a difference between the $16,000 and the $15,750 referred to in the insurance declaration—are you able to explain that, sir? A. Well, we always place even thousands, and if it is fifteen thousand some odd hundred, we say sixteen thousand. The same way in any number, if it is fifteen thousand five hundred, it would be the same thing, sixteen thousand. If seventeen thousand eight hundred, it would be eighteen thousand—always up to the top thousand, just above the hundreds.

Q. Have you any other record of shipments showing shipment to the Federal Reserve Bank, sir, and I show you a

[redacted]

[redacted]

[redacted]

[redacted]

Kaufman, I now move to strike out the testimony of this witness.

The Court: The motion is denied, subject to the exception of Mr. Kaufman.

Mr. Gray: I make the same motion, if Your Honor pleases, on behalf of the defendant Davis.

The Court: The motion is denied, subject to the exception of the defendant.

By Mr. Gray:

4613 Q. Mr. Meitin, the things that you are talking about occurred in April of 1937; is that correct? A. Yes, sir.

Q. And when was the matter ever called to your attention after that—the first time? A. Some time in 1940—the first part of 1940.

Q. And aside from the things that definitely appear on your records that have been produced and offered in evidence, you are compelled to depend upon your memory; is that correct? A. Yes, sir.

Q. And it was at least three years after the incidents that you have described took place before anybody asked you any questions about it; is that right? A. No, sir.

Q. Then maybe I misunderstood you. A. I think you
4614 have.

Q. I beg your pardon? A. Yes, sir; at the time that deposit was made we discussed it there at the time.

Q. You mean you may have talked it over with somebody then? A. Yes, sir.

Q. But I am talking about—when anybody from the Government or the defense or anybody else asked you to recall the incident, it was three years later, wasn't it? A. That is right.

Q. Now, do you know how that $15,750 that you say you shipped to the Federal Reserve Bank was made up? A. No, sir.

Mr. Gray: Your Honor will indulge me a minute.

By Mr. Gray:

Q. I want to see if I understand you correctly: your records show that there was $15,750 sent to the Jacksonville bank—that is, the Federal Reserve Bank of Jacksonville—and although you say you made up that shipment and you have produced the white slip, and the yellow slip, and the pink slip, and the insurance slip, and everything of that kind, you do not know how it was made up, do you? A. No; but I know five one-thousand-dollar bills were included in it.

Q. You know five one-thousand-dollars bills were included in it? A. At least that. 4616

Q. Were there any more than five? A. Yes, sir.

Q. Yes. How many more than five one-thousand-dollar bills? A. Well, from checking my records I know there is one—one more one-thousand-dollar bill included in that shipment.

Q. Now, does your bank keep records of receipt of and disposition of one-thousand-dollar bills as one-thousand-dollar bills separate and apart from other moneys? A. I will answer that this way—you may stop me if I am not answering according to your wishes——

Q. Well, it is not a matter of answering it according to my wishes—— A. Well, I mean according to what you want—I don't know whether you want the answer this way. 4617

Q. I will try to make myself clear: Does your bank keep a record of thousand-dollar bills that come in and thousand-dollar bills that go out? A. No, sir, but we ship thousand-dollar bills immediately on receipt.

Q. In other words, you like to get rid of them? A. Yes, sir.

Q. You handle quite a few of them, of course? A. No, sir.

Q. Well, I took it that you did from your statement—maybe I was wrong. "We ship them as soon as we get them."

Q. That is, you do not want to keep thousand-dollar bills? A. No.

Q. And you send them to the Federal Reserve when you get them? A. That is right.

Q. But you keep no record of from whom you receive them, to whom you may pay them, if you happen to pay them out to anybody, or their numbers, do you? A. We make a certain record of the bill when they come in in this manner, that we often, and which is our custom, write a person's name on the bill.

Q. Did you do that here? A. I don't remember that, but I would say that probably we did.

Q. Well, do you have any memory on that? A. I would
4619 say right now that I did, yes.

Q. Now, those bills that you have been talking about—you wrote somebody's name on them? A. That is right.

Q. And then you sent them to the Federal Reserve Bank in Jacksonville? A. That is right.

Q. And the names, therefore, must have been on those bills when they were received at the Federal Reserve Bank at Jacksonville. You did not take the name off before that? A. No, sir; they would probably be——

Q. And you are positive you wrote a name on those bills? A. I wouldn't say I was positive, but that was our regular custom, and I would think—I would recollect that I did, yes.

Q. Would you say positively you did? A. I would recol-
4620 lect that I did.

Q. In other words, what you are willing to say is that it is your best recollection that you did? A. That is right; that is right.

Q. Did you do the writing yourself? A. Yes, sir.

Q. With a pen or pencil? A. With a pencil, very lightly on the bill.

Q. What did you write? A. Wrote the name of Firestone on the bill.

Q. And your best recollection is that you wrote the name of Firestone on the bills? A. Yes, sir.

Q. And if it was not on the bills when they reached the Federal Reserve Bank of Jacksonville, your recollection is wrong? A. That is right.

By the Court:

Q. What did you say you wrote it with? Did you say "lightly in lead pencil"? A. Yes.

The Court: Thank you.

Mr. Salsburg: I did not hear that question.

The Court: I asked him whether I understood him rightly in saying that he wrote it lightly—the name lightly in pencil. 4622

Is there further cross-examination, gentlemen?

Mr. Gallagher: No further.

Mr. Gray: No.

Mr. Gahagan: I believe there is a question on redirect.

Redirect Examination by Mr. Gahagan:

Q. Have you, at the request of the Government, examined your records to determine when your first shipment prior to the shipment of April 16th was?

Mr. Gray: I am sorry. May I ask that that question be read to me? I could not hear it. 4623

The Court: It may be.

(The question was read by the reporter.)

Mr. Gray: That is objected to, if your Honor pleases. I do not know how far he intends to go—he may be going back to 1890, for all I know.

The Court: I think I will permit the question to be asked and save your exception.

Mr. Gray: Did Your Honor understand—when was your first shipment, not the last shipment—when was his first shipment.

Mr. Gahagan: The first shipment, reading backwards.

Mr. Gray: That is not what he said.

The Court: That is what I understood.

Mr. Gray: I did not so understand it.

The Court: But you let us have it over again so there won't be any doubt about it.

Mr. Gahagan: All right, sir.

By Mr. Gahagan:

4625 Q. Preceding the shipment in which you enclosed the five one-thousand-dollar bills that you received from Mary Davis Firestone, when was the last time before that shipment went out that you made any shipment of currency to the Federal Reserve Bank, Jacksonville, Florida.

Mr. Gray: Objected to as not being redirect, and being totally irrelevant and immaterial to this issue.

Mr. Gahagan: It excluded——

The Court: Are those the only objectons that you have—those two objections are overruled and the question may be answered.

The Witness: Yes, sir, at the Government's request we went through every deposit in the bank and verified whether we could have only received currency of one-thousand-dollar bills in two deposits, one of the post——

4626

Mr. Gray: Wait a minute; I am objecting to his testifying to what he ascertained, which was not in the question.

The Court: Now, it is getting near the end of the day. I am sorry to interrupt you, but I am going to ask the reporter to be kind enough to read the question and then you just tell us the answer to that question.

(Question read by the reporter as follows:

"Q. Preceding the shipment in which you enclosed the five one-thousand-dollar bills that you received from Mary Davis Firestone, when was the last time before that shipment went out that you made any shipment of currency to the Federal Reserve Bank, Jacksonville, Florida?")

The Court: If you can, answer it.

The Witness: I can answer that. I checked the records till the previous time that we shipped currency to the Federal Reserve Bank; yes, sir.

4628

By the Court:

Q. Yes, and what is the answer? When was that time? A. I think it was about three days before, April 13th, if I remember from my recollection, checking the records.

By Mr. Gahagan:

Q. Does this ledger sheet, Government's Exhibit 14, (Amici Exhibit 160) indicate when the last shipment was, sir?

Mr. Gray: May I see that sheet, please?

4629

(Mr. Gahagan handed the sheet to Mr. Gray.)

Mr. Gray: I have no objection to the question. The sheet is in evidence. No, I don't know whether it is or not.

The Court: Yes, it is Exhibit 14, (Amici Exhibit 160) I think.

A. Yes, it shows on date of April 13 that we charged the Federal Reserve Bank with twenty-two thousand dollars in currency.

By Mr. Gahagan:

Q. And what does that indicate to you, a person in charge of currency shipments at that time?

Mr. Gray: That is objected to if Your Honor please. That calls for the operation of this gentlemen's mind.

Mr. Gallagher: Furthermore, the record speaks for itself, if Your Honor please.

The Court: I guess we won't take what it indicates to him unless I can understand a little more
4631 what you are seeking. What do you offer to show?

Mr. Gahagan: This man is the man who shipped the currency out, and from that day on the record was just a pure entry. I would like to know what he, in charge of the shipments of currency—what that record would indicate happened on that particular day in connection with the currency. Of course, he was in charge of it and it is his personal recollection.

Mr. Gray: He hasn't said he was in charge of that shipment.

The Witness: Yes, sir, I was.

Mr. Gray: The question itself is not proper, but
4632 if Mr. Gahagan chooses to ask him does he have a recollection of it, does he know what it consisted of, Your Honor having ruled that the question itself is relevant, I won't raise any further question.

Mr. Gahagan: May I withdraw the question and phrase it another way.

The Court: Yes, you may, but Mr. Gray has just made a statement that I am not sure that I fully comprehend. I admitted the testimony which has recently been received over two objections, two grounds of objection stated by Mr. Gray, and I thought that the evidence should be received in the face of those objec-

tions because I thought the answer might help the jury in testing the witness' recollection of the particular transaction to which the earlier testimony referred. Now do I understand that you do not now object to the witness testifying as to what a certain entry on Exhibit 14 (Amici Exhibit 160) mean to him?

Mr. Gray: Oh, no, I have made my objection to that but I have suggested, although maybe my suggestion is out of order——

The Court: To shorten this, I will sustain the objection as to what the entry meant to the witness, when put in that form. 4634

By Mr. Gahagan:

Q. At what time of the day would the shipments to the Federal Reserve be made up, sir?

Mr. Gray: That is objected to.

By Mr. Gahagan:

Q. During the time that we are talking about, April 13, 14, 15 and 16, 1936.

By the Court:

Q. Is there a uniform practice in the bank in that regard? A. Yes, sir. 4635

The Court: Now you may ask the question.

By Mr. Gahagan:

Q. What time was it, sir? A. After closing hours, after two o'clock, the shipments would be made out.

Q. Was there a shipment on the 13th after closing hours? A. Yes, sir.

Q. At the request of the Government did you check the deposits in your bank after that shipment on the 13th? Did

you check the deposits in your bank on the 14th? A. Yes, sir.

Mr. Gray: Objected to.

The Court: I will receive it.

Mr. Gray: Note an exception.

By Mr. Gahagan:

Q. With that idea in view did you check your deposits?

The Court: Now, now, Mr. Gahagan.

Mr. Gahagan: I am sorry, sir. I withdraw that
4637 question, sir.

By Mr. Gahagan:

Q. Did you find any deposit as large as five thousand dollars, with the exception of the one deposit of Mary Davis Firestone?

Mr. Gray: That is objected to.

The Court: That is received.

Mr. Gray: That question is too general.

The Court: That is received, and the exception of both defendants may be noted.

4638 A. Yes, sir, there were deposits of over five thousand dollars made in the bank.

By Mr. Gahagan:

Q. Were there deposits in cash of over five thousand dollars? A. No, sir.

Q. And deposits of over five thousand dollars were of what nature? A. They were all checks and would be marked that way.

Q. What was the highest deposit in cash up until the time of the shipment on April 16, the one including the five one-thousand-dollar bills? What was the deposit in cash?

4639

Mr. Gray: That is objected to because we don't know how far back he goes.

Mr. Gahagan: To the last shipment, April 13.

The Court: But how do you get anywhere by showing what is the largest deposit made unless you show all of the deposits and add them together?

Mr. Gahagan: If no deposit was over a thousand dollars, then there could have been no deposits of over a thousand dollars in cash. I submit that that follows.

The Court: Have you asked him about a thousand-dollar deposit?

4640

Mr. Gahagan: I want to know the largest deposits, and rather than put the words in his mouth, I know that that is the answer and I think that would come.

Mr. Gray: In the absence of any records I make objection that the records would prove that and he has no right to testify.

Mr. Gahagan: He has examined those records in his bank himself.

Mr. Gray: I am still objecting to it because they are not produced.

The Court: If it were a matter of merely describing the record for some unimportant purpose and that description were to be very brief, I should probably receive the evidence, but if you want to go into details and prove the records, you may not prove them by the witness' recollection of what they contain.

4641

Mr. Gahagan: All right, Your Honor.

The Court: Nothing that I have permitted this afternoon has been intended as permitting the proof of any extensive record in any detail by a mere description by a witness. That is why I ruled finally as I have ruled.

4642 *Herman A. Meitin—For Amici Curiae—Redirect*

By Mr. Gahagan:

Q. Mr. Meitin, one last question: You have a personal definite recollection of having taken these five $1000 bills from Mrs. Firestone and put them in that shipment of fifteen thousand, seven hundred and fifty dollars; is that correct, sir?

Mr. Gray: That is objected to.

The Court: That is objected to as too leading. I sustain the objection because counsel has been leading his witness in this regard, and I think, moreover,
4643 he has already testified upon the subject, don't you (addressing Mr. Gahagan)?

Mr. Gahagan: I think he has covered it fully, sir. Just in view of his other questions I wanted to ask that.

Just so that there is no doubt, sir, I would like to ask this one last question.

By Mr. Gahagan:

Q. And the five $1000.00 bills you got from Mrs. Firestone, what did you do with them, sir?

Mr. Gray: That is objected to, if Your Honor
4644 please, because it has been covered, and it is self evident that all that the District Attorney wants to do is simply, as his last question to the witness, impress what he thinks is important, and he shouldn't be permitted to do it for that reason, and that is all.

The Court: That question may be answered.

A. Yes, sir, I shipped those five $1000 bills to the Federal Reserve Bank at Jacksonville.

By Mr. Gahagan:

Q. In what shipment? A. The shipment of $15,750.

Q. On what date? A. On April 16, 1937.

Mr. Gahagan: No more questions.

Recross Examination By Mr. Gray:

Q. But you have no record of it, have you? A. The custom of the bank, Mr. Gray——

Q. Pardon me. Just answer my question. You have no record of those $1000 bills going into that shipment, have you? A. No, sir.

Redirect Examination by Mr. Gahagan: 4646

Q. Who put them in the shipment, sir?

Mr. Gray: That is objected to, if Your Honor please. That has been covered. My friend can't come back——

The Court: Sustained. Don't lecture your friend, and I won't let him lecture you.

(At this point the witness spoke in a low tone of voice to the Court.)

The Court: Mr. Gahagan, do you recall that the witness has heretofore testified fully upon the subject, not only of the records kept by the bank, but 4647
also as to his own personal recollection of the shipment of $15,750 and to his recollection as to the number of $1000 bills included in that shipment? Do you not recall that he has testified upon that subject?

Mr. Gahagan: At this trial, sir?

The Court: Yes, at this trial now.

Mr. Gahagan: Yes, sir.

The Court: If you have forgotten anything or are in doubt as to whether you have asked any question upon this subject that you want to, you may now do it. The witness turned to me and indicated to me

4648 *Herman A. Meitin—For Amici Curiae—Redirect*

that there was something more that he could say, and I doubted the propriety, however desirous I was of being polite to him, of my answering his suggestion.

Now, if you have any further question that you want to ask upon this branch of the case, you may do it, provided it is a competent question.

By Mr. Gahagan:

Q. Do you know of any record in existence which would show a breakdown of that shipment of $15,750, of your own
4649 knowledge?

Mr. Gray: That is objected to.

The Court: That will be answered.

A. Yes, sir, from my knowledge of the Federal Reserve Bank I know that they keep a break-down of all currency shipped to them, of the denominations of the bills. They keep a record of all $500 and $1000 bills that come in.

By the Court:

Q. You are talking now about the records of another bank of the Federal Reserve Bank? A. Yes, sir.

4650

By Mr. Gahagan:

Q. Is the Federal Reserve part of the system in which you are in, sir?

The Court: Aren't you going to have evidence of the Federal Reserve Bank?

Mr. Gahagan: Yes, sir.

Mr. Gray: If Your Honor please, I move that his answer be stricken, and my purpose in making my other objection—I won't say it to Your Honor now and shouldn't before the jury—because I am familiar

because of the other trial with what the Federal Reserve Bank will establish. I want to know what this witness will establish and I think his testimony should be so limited.

The Court: We won't trouble ourselves here with testimony of this gentleman as to what the practice is of the Federal Reserve Bank of Atlanta or of Jacksonville, but will await testimony from one or the other of those banks.

Mr. Gray: Will Your Honor strike his answer from the record?

The Court: His answer may be stricken and disregarded by the jury. 4652

Now, let not the witness understand that the Court is unappreciative of his attempt to assist the Court, and the striking of his testimony is intended as no criticism whatever.

The Witness: Judge, I wanted to answer Mr. Gray's question, knowing how bills are shipped.

The Court: Well, I think the safe course for us now is to treat your evidence as concluded. Thank you very much.

Is there any reason why the witness should not be permitted to return to Florida? 4653

Mr. Gray: Under ordinary circumstances, sir, we should agree. We have just talked about that, but inasmuch as Mr. Gahagan has chosen to start his case from this end, we don't know what he will develop from the other end that may make it necessary to examine this man.

The Court: Oh, yes, you may examine this man now at any length that you want to, upon the assumption that eventually I shall treat this evidence as part of the case.

Mr. Gray: If your Honor please, I am sorry I did not make myself clear. We have examined him with

4654 *Herman A. Meitin—For Amici Curiae—Redirect*

respect to everything that he has now testified to, but, if your Honor please, it may be possible—I don't know,—that in the presentation of other parts of Mr. Gahagan's case there may be some matter that will develop in connection with this that will make it necessary to examine him further. That is why I say that as long as he is here under subpoena I don't want to excuse him but I was about to say this: We are satisfied that he go now if he will agree to come back if things of sufficient importance arise that will make Your Honor think we are entitled to have him

4655 come back.

By the Court:

Q. Will you come back if we need you? A. Yes.

Mr. Gray: That is all. I don't want to inconvenience the gentleman in the slightest, but the case is being tried now in a different manner than it was before, and I don't know what he is holding back.

The Court: But let counsel not examine any witness on the theory that eventually any evidence is going to be stricken out.

4656 Mr. Gray: We don't do that, sir.

The Court: Well, I kept short of five o'clock, didn't I, ladies and gentlemen of the jury, but I went after quarter past four. We will adjourn until tomorrow morning at ten o'clock.

(Adjourned until Wednesday, July 30, 1941, at ten o'clock, A. M.)."

A transcript of the stipulated testimony of Winslow E. Pike follows:)

"WINSLOW E. PIKE, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gahagan:

Q. Mr. Pike, what is your occupation? A. I am assistant cashier at the Federal Reserve Branch Bank, Jacksonville, Florida.

Q. And is that the Federal Reserve Bank of Atlanta? A. Branch of the Atlanta office, yes, sir.

Q. And would you describe to the jury how the Federal Reserve system of Federal Reserve Banks is broken up, so 4658
they may understand that. A. There are twelve main offices of the Federal Reserve Banks located throughout the country. Each of them, or most of them have branches. There are twenty-four branches in number.

Each Federal Reserve Bank is a separate, private corporation, not owned by the Government, and the Atlanta District comprises, or has branches in Nashville, Tennessee, New Orleans, Louisiana, Birmingham, Alabama, Jacksonville, Florida, and they are all tied in together with the head office in Atlanta, and the Federal Reserve Banks, the stock in them, is owned by the banks which are members of the system.

4659

Q. And the branch you are located with is in Jacksonville? A. That is right.

Q. In April of 1937 what was your position at that bank, at the Jacksonville branch? A. I was head teller in charge of the cash department.

Q. As head teller in charge of the cash department what were your duties, sir? A. My duties were general supervision of all the activities of the cash department, supervising the currency that came in through registered mail shipments, express shipments, over the counter deposits by local banks and Governmental agencies, as well as the supervision

4660 *Winslow E. Pike—For Amici Curiae—Direct*

of all outgoing shipments by registered mail, express or otherwise.

Q. Is one of the duties of the Federal Reserve Banks to supply member banks with cash? A. That is one of their prime functions. They bank for their member banks, just the same as your bank would bank for you. The member banks deposit currency when they have an excess and withdraw currency when they need some.

Q. Would you state to the jury and the Court the practice in April of 1937 with respect to receiving cash from
4661 member banks? A. Well, if it was a local member bank I would check the money in over the window, much the same as your bank teller would check it in from you, only, of course, it would be in much larger quantities.

If the shipment came in by express I receipted for it to the express company. If it came in by registered mail, the registered mail clerk employed by the bank, who had gone to the Post Office and taken delivery of the registered packages, would have all of them going to my department written up in a book provided for that purpose, and each parcel numbered, both with a number designating how many, or what the number of the particular package was of the total number going to me, and also any registry numbers or other
4662 identifying marks placed on there by the Post Office Department. I would receipt to this registered mail clerk for the packages he delivered to me.

Q. If I understand you correctly, you receive some cash over the window from local banks? A. That is right.

Q. And some cash was sent in to you either by express or registered mail? A. Yes, sir. We received by far the large majority of it by registered mail and express. It is one of the services of the Federal Reserve Banks to pay all shipping costs in connection with such shipments to and from its member banks.

Q. And was the St. Augustine National Bank, of St. Augustine, Florida, a member bank of the Federal Reserve System in Florida? A. Yes, sir, it was, and is.

Q. And what method would be used in receiving cash from the St. Augustine National Bank, in St. Augustine, Florida? A. Well, it would be just as I have outlined. If it came in by express I would give the express company a receipt for it. If it came in by registered mail I would also receipt for that to our own clerk, who had given his receipt to the Post Office Department.

Q. And would that be a local bank, in the event—I mean, bringing in cash in hand and giving it in at the window, 4664
or would it be sent by registered mail? A. In the case of a local bank.

Q. Was the St. Augustine Bank a local bank? A. No, we would not consider it as a local bank, although they are nearby.

Q. In the regular course of the business of the Federal Reserve Bank, Jacksonville Branch, at which you worked, did you maintain records to show the receipt of cash from member banks? A. Yes, sir, we maintained numerous records concerning all cash deposits received from member banks, whether it was deposited over the window or however it came in, there was, and there is kept a record broken down 4665
into detail as far as it is possible to do so, by denomination.

Q. By denomination, what do you mean by that, fifties, hundreds? A. Ones, fives, tens, twenties, we have a long sheet, and it is headed up with the different denominations, ones, twos, fives, tens, twenties, and each shipment is listed on there, and the total amount of each one of those denominations is placed under the proper column, and the total, which should balance with the total that we have been notified is in there.

Q. And in the regular course of the business of your bank did you keep any serial numbers of any bills? A. It is our

regular practice of all bills larger, or five hundred dollar denomination and larger, to keep the serial numbers of these bills.

Q. You say five hundred dollars and larger: would that include thousand dollar bills, sir? A. Five hundreds, thousands, five thousands and ten thousands.

Mr. Gahagan: May I point these out to counsel?
The Court: Oh, certainly.

By Mr. Gahagan:

4667 Q. I show you a book and ask you what this book is, Mr. Pike?

Mr. Gray: If Your Honor please, the evidence which the District Attorney is now offering through his question and from his opening statement, and also from the examination of these records, shows that this testimony has to do with the transmission of money from the St. Augustine Bank. The questioning already establishes that fact. I desire to make the objection that I made yesterday, when the gentleman was upon the witness stand from the bank of St. Augustine, that this evidence is premature, that it should

4668 not be permitted to be established until the Government has shown at least prima facie, so that Your Honor could say that they had gone that far, evidence of the establishment of the conspiracy. That objec- is made on behalf——

Mr. Gallagher: We join.

Mr. Gray: —of all defendants.

The Court: I conceive it to be my duty in the exercise of my discretion to overrule the objection of each defendant, and save the exception to each defendant.

Mr. Gray: Yes, sir. Now, then, if Your Honor pleases, with respect to these records that are being

handed, and specifically with respect to this question, and then if Your Honor will make such ruling as you may make, so it will cover all records I will not have to make other objections, and in the event of Your Honor not agreeing with me, unless it can be established that this witness made these entries I am objecting to his testifying as to what the entries are. I have no objection to his testifying what the books are, that is to say, that it is a certain book.

The Court: Then as I understand you, Mr. Gray, your objection becomes a two-fold one, one to the effect that the evidence is prematurely offered,—— 4670

Mr. Gray: Yes, sir. That Your Honor has passed on.

The Court: —and the other is that the witness may not testify to entries in the books unless he made them himself.

Mr. Gray: Yes, sir, or unless it can be established that they were definitely made under his particular personal supervision. That is a prerequisite to the questions in respect to the records.

The Court: I entertain a different view as to your second objection, especially in the light of the legislation of June, 1936. I hope you know what I am talking about. 4671

Mr. Gray: I am familiar with the Act, sir, but I still think that the objection should be pressed by us, sir, if Your Honor will give a ruling, and give us an exception.

The Court: Oh, yes, I overrule the objection on each ground, and save the exception of each defendant.

Mr. Gray: For both defendants.

A. This is a book maintained by our bank which at this time was prepared under my supervision, covering all reg-

4672 *Winslow E. Pike—For Amici Curiae—Direct*

istered mail received by the Federal Reserve Bank of Jacksonville during the period covered by these entries, from August, 1936 until October, 1938.

By Mr. Gahagan:

Q. Is that a book kept in the regular course of the business of the Federal Reserve Bank, Jacksonville Branch, sir? A. Yes, sir, it is.

Q. And was it kept under your supervision? A. It was.

Q. Do you have any——

4673

The Court: Did you ask him whether the records that are being presented to him were made in the regular course of business?

Mr. Gahagan: Did I ask that last question?

The Witness: Yes, you did, sir.

By Mr. Gahagan:

Q. So that there be no mistake, can you state whether or not the record before you, the book before you, was made in the regular course of the business of the Federal Reserve Bank of Jacksonville, Florida? A. Yes, it was.

4674 Q. And do you rely upon these records in transacting your business? A. Absolutely.

Q. And what is the purpose of preparing this particular record? A. Well,——

Q. The book before you. A. In the first place, the clerk who writes this up, makes the actual entries, has given the United States Post Office Department his receipt for all of the pieces of registered mail listed herein, and if he did not secure some further receipt for himself from those to whom he delivered the packages he would have no way of getting out of the responsibility for the disposition of these pieces of mail.

Q. Now, in other words, the clerk who wrote this book up was the person who received the package from the United States mail,—— A. That is right.

Q. —is that right, sir? Do you have a shipment on or about August 16—pardon me—April 16 or 17, 1937, from the St. Augustine National Bank, St. Augustine, Florida, on that record, sir? A. This record shows that on April 17, 1937 we received a registered parcel from the St. Augustine National Bank. It was numbered 5 in the sequence of numbers assigned to it by the registered mail clerk for our purposes, and the registered number assigned to it by the Post Office Department was 5094. It was one of a series of thirteen pieces that I signed for on that date. 4676

Q. Well, when you say you signed for on that date, what appears there to indicate your signature? A. My initial, "P", on the 13 on the right-hand margin.

Mr. Gahagan: I now offer the book in evidence, Your Honor.

The Court: It will be received.

Mr. Gahagan: Or the page thereof on which these entries appear.

Mr. Gray: If Your Honor's ruling will cover all of these exhibits I won't need to make a separate objection to the introduction of the exhibits. 4677

Mr. Gahagan: Number 15, (Amici Exhibit 161) sir.

(Record book of the Federal Reserve Bank of Jacksonville from August, 1936, to October, 1938, was marked Government's Exhibit 15.) (Amici Exhibit 161).

The Court: I hesitate to make quite so general a ruling, but I think I may say that unless there appears something unusual in the papers hereafter offered in this connection, and I let you know that the

ruling is not applicable thereto, both defendents may understand that you have, that he has an exception——

Mr. Gray: Yes, sir.

The Court: —to each of these exhibits.

Mr. Gray: Trying to save an interruption, that is all.

The Court: Yes, sir. Of course, if there are additional grounds of objection they should be called to my attention.

4679 Mr. Gahagan: This is Government's Exhibit 15. (Amici Exhibit 161).

Mr. Gray: All right.

Mr. Gahagan: May I show this to the jury?

The Court: You may, sir.

Mr. Gahagan: And may I at the same time show the registry receipt, Government's Exhibit 13? (Amici Exhibit 159).

Mr. Gray: The only objection I have to that, if Your Honor please, is, of course, he has a right to show this present exhibit, he has shown the other exhibits, and what he does by showing two exhibits is, he makes a little argument as he goes along. That is

4680 the only objection.

Mr. Gahagan: I do not wish to comment.

Mr. Gray: That I don't think is proper.

The Court: You may show the two exhibits to the jury, Mr. Gahagan.

Mr. Gahagan: May I show them to you first, sir?

By Mr. Gahagan:

Q. And this initial "P", is that in your handwriting, sir? A. That is my handwriting.

Q. Indicating that you received those thirteen pieces? A. That is right.

(Government's Exhibits 13 and 15 (Amici Exhibits 159 and 161) were shown to the jury.)

The Court: For the purpose of the record, may a notation be made that the act of June, 1936, to which I have referred, appears as Section 695 in Title 28 of the United States Code.

By Mr. Gahagan:

4682 Q. After these thirteen packages, and, specifically, the item from the St. Augustine National Bank, Item No. 5 you have referred to, are received by you and you sign your initial to the package, what do you then do, sir? A. Take each package one at a time, open them up—they are usually in a sealed moneybag—open them up in the presence of witnesses, and first go through and verify it by just a strap count, the strap that are around the money, to see that they total the amount stated to be therein by the declaration which accompanies the shipment.

Q. By strap count, do you look at the numbers on the straps? A. Our regulations provide that all currency must have straps around it bearing the amount, that is, under the 4683 strap, and the name of the bank that shipped it in, and we merely verify those straps first to see if they total the amount called for by the declaration. Then it is later, after it has been broken down and recorded by denomination, and if there are any large bills, the serial numbers are recorded. Then the individual straps of money are all assembled, the whole day's receipts are assembled by denominations and made up into solid bundles and turned over to young ladies who verify it, too, by an actual bill count under the straps.

Mr. Gahagan: I didn't realize the jury had not finished looking at the exhibits, sir.

By Mr. Gahagan:

Q. Mr. Pike, after you have made the strap count and turned the bundles over to these young ladies you referred to, what do they do? A. They verify the actual contents under each strap, and, as I have said, in the case of large bills, the young lady who is in charge of that phase of the work records the serial numbers of those bills, the bank they came from, and the date they were received in.

Q. In April of 1937, sir, was this work done under your general supervision? A. It was all done under my direct
4685 supervision.

Q. Under your direct supervision? A. I worked right with the actual cash, myself.

Q. Did they prepare these young ladies working under your supervision did they prepare any records in connection with their work which are records used in the regular course of business in the Jacksonville Branch of the Federal Reserve Bank? A. We always maintain a record of the denominations making up each individual shipment. We have a large break-down sheet that itemizes by denominations the amounts of every currency shipment or deposit received by our bank. It is all done in the regular course of the business of the bank.

4686 Q. I show you a book and ask you what it is. A. This is a breakdown record of incoming currency shipments from March 10, 1937, to May 19, 1937.

Q. Should this book covering that period have an entry relating to the St. Augustine National Bank shipment of April 16, 1937? A. It should, yes, sir.

Q. Would you look to see whether or not it does have that entry? A. The shipment made by that bank on April 16 would, of course, not reach us until a day later, April 17th, and we do show a shipment here on April 17th from the St. Augustine National Bank. The break-down shows it contained $1,250 in fives, $4,000 in tens, $4,000 in twenties,

$500 in five hundred dollar bills, and six $1,000 bills, totalling $15,750.

Q. Is there any slip or piece of paper contained in the shipment of the actual money to you identifying the shipment? A. Yes, sir. As I have previously stated, each registered mail shipment has a form therein which is furnished originally to the member banks by the Federal Reserve Banks for their use when making shipments to the various Federal Reserve Banks, and it is supposed to be dated, have the name of the sending bank, the total amount of currency in the shipment, and be signed by at least one officer of the bank who verified the shipment, and also by the clerk who prepared the 4688
shipment and deposited it in the post office. Those are all uniform Federal Reserve regulations.

Q. I show you a book in which is contained Government's Exhibit 12 (Amici 158) and ask you if that is the type of book that is furnished by the Federal Reserve Bank of Atlanta, sir? A. Yes, sir, it is. It is termed insurance declaration, it is form MD47. It is used in the regular course of our business in connection with shipments from member banks. This is the book, evidently, which was furnished to the St. Augustine National Bank and contains their file copies of all of the forms which were sent to us. Originally there are three sets to each one of the shipments, that is, there is a 4689
white original sheet, and a sort of yellow duplicate sheet, and this pink sheet which is retained by the member bank for their record.

The white original sheet is shipped by the member bank at the time they make the shipment, but it is sent by separate mail, it doesn't actually accompany the shipment as does the yellow or duplicate copy which goes into the bag containing the money shipped to the bank.

Q. Now, you referred to a white copy of the insurance declarations. Can you state whether or not that white copy is kept as part of the regular records in the regular course

of the business of the Jacksonville Branch of the Federal Reserve Bank, sir? A. Yes, sir, they are. They put us on notice that a shipment has been placed in the post office by that bank, and in the event the shipment doesn't arrive within what we would say is a reasonable length of time, we would then, of course, trace it. When the form does come in and the yellow sheet which accompanied the shipment is taken out and verified and everything is all right and the bank has been credited with the total amount of the currency they shipped us, plus whatever postage they put on the shipment, the two forms are then placed together and filed away.

4691 Q. As part of the regular practice of your bank? A. That's right.

Q. I show you Government's Exhibits 10 and 11, (Amici Exhibits 156 and 157) and ask you if you can identify those exhibits as part of the regular records of your bank, sir. A. Yes, sir. These are regular records of our bank covering the shipment made on April 16, 1937, by the St. Augustine National Bank, totalling $15,750.

Q. When you opened the shipment, the bag in which the $15,750 was contained, which of those copies was in the bag, sir? A. This copy (indicating).

Q. The yellow copy. A. Yes.

4692 Q. May the record so indicate. And the white copy which you have in your hand, that is received how by your bank, sir? A. That is received by separate straight mail in another envelope, entirely. I might mention that the Federal Reserve Banks all have a uniform practice of employing insuring agents. Our insuring agents at the present time is a firm in Atlanta, Purdue and Egleston, and we have a blanket policy covering all shipments in transit to and from Federal Reserve Banks, and we pay the insurance premiums on those shipments, and that is the purpose of this white sheet, so that when this comes in, and this one may be has been delayed (indicating)——

Q. The yellow sheet you refer to? A. Yes. The white one is received by separate mail, and then we are put on notice that the bank has mailed us a valuable package, and we declare this insurance to our agents on a form which is mailed to them at the close of each day's business, which includes not only the shipments we actually received on that day, but the shipments we have been notified have been made and are in transit to us, so that in the event of loss we are protected.

Q. And I show you another piece of paper and ask you what that piece of paper is, sir? A. This is the report to our insuring agents which in 1937 were Spratlin, Harrington and Thomas, in Atlanta, Georgia. I might mention that contract is changed every year—not necessarily changed, but renewed, and if the head of the office in Atlanta, can obtain a better premium rate from a different company and secure just as good coverage, why, of course, they are going to change and take the other company. This time it was Spratlin, Harrington and Thomas, and now it is another firm. 4694

This is a daily report made up on April 17, 1937, covering shipments of currency, or coin, or securities, either one, which were reported to Spratlin, Harrington and Thomas.

4695

By the Court:

Q. Mr. Pike, the paper about which you have been talking presently—is that taken from the files of the bank? A. Yes, sir, this paper was removed from the files of my bank.

Q. I understood you to say that it is a notice to an insurance company. A. Well, this is the branch file copy of the notice. This is not the original notice to the insurance company.

Q. The original notice, of course, went to the company, itself? A. That's right.

Q. And when sending it, is it the practice to keep a copy, a carbon copy? A. It is a carbon copy of the original, yes.

Q. Does that copy constitute part of the records of the bank? A. Yes, sir.

The Court: All right.

By Mr. Gahagan:

Q. Is that carbon copy kept in the regular course of business of the bank? A. Yes, sir, it is.

4697 Q. Would you tell me whether or not there is any shipment recorded on there of $15,750 on or about April 16th or 17th, 1937, from the St. Augustine National Bank, St. Augustine, Florida, sir? A. Well, this report form is dated April 17, and it shows thereon a shipment of $15,750, from the St. Augustine National Bank. This particular shipment doesn't show when such shipments are made by the bank, it merely shows either when we have received them or are put on notice that such a shipment had been made.

Mr. Gahagan: The Government now offers, first, the book labelled incoming shipments, and a page of that book for the date of April 17, 1937.

4698 (A page of a book labelled incoming shipments, for the date of April 17, 1937, was marked Government's Exhibit 16.) (Amici Exhibit 162).

Mr. Gahagan: And an advice dated April 17, 1937, labelled incoming shipments reported for insurance, Exhibit No. 17. (Amici Exhibit 163).

(An advice dated April 17, 1937, labelled incoming shipments reported for insurance, was marked Government's Exhibit 17). (Amici Exhibit 163).

By Mr. Gahagan:

Q. Is the amount on the yellow and white copies of $15,750 the same as the total on Government's Exhibit 16

(Amici Exhibit 162) for the shipment from the St. Augustine National Bank, sir?

Mr. Gray: The objection I make, if Your Honor pleases, is that these exhibits speak for themselves, and he is proving the same thing over and over and over again.

The Court: The objection is overruled and an exception noted for each defendant.

A. Yes, sir, the records all coincide showing a total of $15,750 on both the yellow and white copies, which coincides with the total shown on the break down, and the amount reported to our insuring agents. 4700

Mr. Gahagan: May I show these to the jury, sir?

The Court: You may.

Mr. Gahagan: I am sorry, Your Honor, I did not show them to you. I seem to forget that, and I shouldn't.

The Court: Well, you may proceed.

By Mr. Gahagan:

Q. Mr. Pike, after you have made the strap account and you have given the shipment to the girls, and then the record is broken down, what is done with the bills of larger denominations, if anything? A. They are recorded by serial number in a book provided for that purpose. 4701

Q. Now, I show you a book and ask you what that is, sir? A. That is the record of 5-100 and 1-1000 dollar bills received from banks from December 22, 1936 through November 3, 1937.

Q. Covering the period of April 17, 1937, sir? A. Yes, that is in the period.

Q. That book covers denominations—500-dollar bills; is that right, sir? A. 500, 100 and——

4702 *Winslow E. Pike—For Amici Curiae—Direct*

Q. No, $500 bills first? A. That is right.

Q. It also covers $1000 bills? A. That is right.

Q. And the serial numbers of both the $500 and $1000 bills are taken and recorded in that book; is that right, sir? A. That is right.

Q. Reading from Government's Exhibit 16 (Amici Exhibit 162), would you state how many $1000 bills are recorded on there, sir?

The Court: Six. You have been over that.

4703 *By Mr. Gahagan:*

Q. And can you state from the book you have before you whether or not there is a record kept, in the ordinary course, in the regular course of business of the Federal Reserve Bank, Jacksonville Branch, showing the numbers of those six $1000 bills? A. Yes, it does. It shows that on April 17, 1937, we received the six $1000 bills referred to on the breakdown record and gives the serial numbers of those six bills.

Mr. Gahagan: I offer this book in evidence, Your Honor.

The Court: It will be received.

Mr. Gahagan: The page, I should have said, as
4704 Government's Exhibit 18. (Amici Exhibit 164.)

(Page of book referred to was marked Government's Exhibit 18 (Amici Exhibit 164) and received in evidence.)

Mr. Gahagan: May the witness read the numbers of the bills for the record, sir?

The Court: He may.

The Witness: The numbers of the $1000 bills, in the order in which they are recorded in this book—the first one is B00106582A;

C00022287A
C00001221A
C00012037A
C00016293A
C00013944A

By Mr. Gahagan:

Q. Who writes the numbers of the serial—withdraw the question, please.

Who records the numbers of the thousand-dollar bills in this book marked Government's Exhibit 18 (Amici Exhibit 164), sir? A. A young lady working under my direct supervision. 4706

Q. That is not done by you? A. I did not do it myself.

Q. Do you know what the letter "C" which stands before the serial number of the bill signifies in the Federal Reserve System, sir? A. It signifies it is a bill issued by the Federal Reserve Bank of Philadelphia. The twelve Federal Reserve Banks are numbered and lettered, beginning with Boston, which is 1-A, New York is 2-B, Philadelphia 3-C, Cleveland 4-D—right on down the line through the twelve banks.

Q. And the "C" signified that it comes from Philadelphia Federal Reserve Bank? A. That it is a Philadelphia Federal 4707
Reserve note.

Q. Has that thing a common name—the letter before? Is that the "prefix letter"—they call it? A. Prefix.

Q. And then the letter following the bill, which in these six instances—in each instance is an "A" number of an "A" letter—what does that "A" letter signify to you, sir in the Federal Reserve System? A. That signifies that it is within the first hundred million notes issued; the next hundred million would take the suffix "B" and so on.

Q. Of your knowledge, are there any notes issued above "A"? A. Not to my knowledge.

4708 *Winslow E. Pike—For Amici Curiae—Cross*

Mr. Gahagan: May I show this record to the jury?

The Court: You may.

Mr. Gahagan: No further questions, your Honor.

Cross Examination by Mr. Gray:

Q. Mr. Pike, as I understand your evidence, aside from the interesting piece of testimony as to how the bank did its business——

Mr. Gahagan: I object to any characterization.

The Court: That is excluded in that point, Mr.

4709 Gray. You may inquire of the witness.

Mr. Gray: All right, sir.

By Mr. Gray:

Q. As I understand your evidence, you have told us that you had gotten these six $1000 bills from the St. Augustine bank on the 17th day of April, 1936——

Mr. Gahagan: That is not——

Mr. Gray: 1937—1937—and that you have made a record of the receipt of the numbers; is that correct?

The Witness: That is correct.

4710

By Mr. Gray:

Q. Did you see those bills? A. I have no recollection in the matter at all, Mr. Gray. It is a matter of record with me.

Q. So that your testimony comes only from your records? A. That is correct.

Q. In the regular course of your work—your own work—do you make any account of bills of that size when they come in—you yourself? A. Yes, sir; I actually handled every bill—or did at that time; I do not now. I actually handled every bill of $500 denomination and larger.

Q. Then you would say that from your practice you actually handled $1000 bills?

Q. And would you say you handled them after this strap was taken off of them? A. Yes, sir; I would have handled them both before and after the strap was taken off.

Q. So that no matter what your recollection may be—that is, as to what you actually did in this case—your recollection, from your practice, would be that you handled separately each one of these six $1000 bills? A. Yes sir.

Q. Did you notice anything peculiar about them? A. No, sir; I have no recollection of noticing anything peculiar. 4712

Q. If there had been you would have noticed it, would you not? A. In all probability; yes.

Mr. Gray: Will Your Honor indulge me a moment?

That is all; thank you.

Mr. Gahagan: May I confer?

The Court: Certainly.

The Witness (to the Court): Is a witness permitted to speak to you, Judge?

The Court: Now I am in trouble, Mr. Pike.

Mr. Pike just turned to me and asked whether a witness is permitted to speak to the Court. I am not, however, much I want to, going to listen to Mr. Pike unless all counsel are willing that he should. 4713

Mr. Gray: We have no objection, of course, to his speaking to Your Honor.

Mr. Gahagan: No objection.

Mr. Gray: That is, at side bar, so there may be no public discussion.

Mr. Gahagan: No objection at all to anything he wishes to say.

Mr. Gray: But I do object to his making any other statements.

4714 *Winslow E. Pike—For Amici Curiae—Redirect*

(The witness speaks to the Court.)

The Court: The witness simply called my attention to something else—something that had not been asked him, and I told him I should have to leave it to counsel as to the questions they wanted to ask.

Mr. Gray: Thank you, sir.

The Court: I take it, to that course there is no objection on the part of any of the defendants.

Mr. Gray: No, sir.

The Court (to Mr. Gahagan): Now, what are you
4715 worrying about, Mr. Gahagan?

Mr. Gahagan: Well, I will state exactly what is on my mind, sir.

The Court: No, I won't compel that.

Redirect Examination by Mr. Gahagan:

Q. Is there any way, sir, you wish to change your testimony, or anything you wish to say that has a bearing to help the jury to understand about these $1000 bills, sir?

Mr. Gray: That puts——

The Court: Do you object to that question?

Mr. Gray: Yes, that puts me in an embarrassing
4716 situation.

The Court: Well, that is all you need to do, because I sustain your objection.

By Mr. Gahagan:

Q. Do you wish to change your testimony in any way, sir? A. No, I——

Mr. Gray: Wait; that answers the question.

The Court: That is right.

By Mr. Gahagan:

Q. Do you wish to add to your testimony in any way, sir?

Mr. Gray: I object to that. That lets him be the judge as to whether certain statements he may desire to make are admissible, and we cannot do anything about it.

(After a pause) Are you through, Mr. Gahagan?

Mr. Gahagan: I have no further questions."

A transcript of the stipulated testimony of Earl E. Seiwell follows:

"EARL E. SEIWELL, having been duly sworn, was examined 4718
and testified as follows:

Direct Examination by Mr. Gahagan:

Q. Mr. Seiwell, what is your occupation, sir? A. Bank teller.

Q. In what bank? A. Guaranty Trust Company, Atlantic City.

Q. Any branch of that bank, sir? A. Marine Atlantic Safe Branch, New York and Atlantic Avenues.

Q. How long have you been associated with that bank? A. Since 1919.

Q. In May of 1936, what was your position at that bank? 4719
A. I was teller number three.

Q. Teller number three? A. Teller number three.

Q. At that time who was the assistant treasurer of the Marine Atlantic Branch of the Guaranty Trust Company, sir? A. Joseph B. Smith.

Q. Is that man alive or dead today? A. He is dead, sir.

Q. Have you ever watched him write his signature, sir? A. I have.

Q. Would you recognize his signature if you saw it? A. I would.

Q. In your profession, sir, and occupation, do you from time to time, and are you from time to time called upon to compare signatures? A. I am.

Q. And do you pay out checks at the bank on the basis of your comparison of signatures? A. I do.

Q. I show you Government's Exhibit 19 (Amici Ex. 165) in evidence, and ask you if you can identify the signature at the bottom of the exhibit. A. That is the signature of Joseph B. Smith.

Q. Who was at the time the letter was written on May 6, 1936, in what position in your bank? A. The assistant treas-
4721 urer.

Q. You recognize that signature, sir? A. I do.

Q. And I show you Government's Exhibit 25 (Amici Ex. 171), letter of May 8, 1936, and ask you to identify the signature on that letter. A. That is the same signature, Joseph B. Smith, assistant treasurer.

Q. And another letter, Government's Exhibit 28 (Amici Ex. 174), letter of August 6, 1936, and ask you to identify the signature on that letter, sir. A. That, also, is the same signature.

Q. I show you Government's Exhibit 26 (Amici Ex. 172), letter of May 28, and ask you to identify the signa-
4722 ture on that letter, sir. A. That, also, is the same signature.

Q. And by the same signature each time you signify Joseph B. Smith? A. I do.

Q. The assistant treasurer? A. The assistant treasurer.

Q. Of the Guaranty Trust Company, Marine Atlantic Branch? A. That's right.

Q. And I show you another exhibit, Government's Exhibit 29 (Amici Ex. 175), letter of August 7, 1936, and ask you if you can identify the signature on that exhibit, sir. A. That also is the signature of Joseph B. Smith, assistant treasurer.

Q. And I show you Government's Exhibit 27 (Amici Ex. 173), a letter dated June 11, 1936, and ask you if you can identify the signature on that letter. A. That also is the same signature of Joseph B. Smith, assistant treasurer.

Q. Thank you, and I have Government's Exhibit 22, (Amici Ex. 168), and ask you to identify the signature on that exhibit, sir. A. That is the same signature, Joseph B. Smith, assistant treasurer.

Q. Have you ever seen the exhibit before, Government's Exhibit 22 (Amici Ex. 168), sir? A. I have.

Q. When was the first time you saw that exhibit, ever? A. When it was received in a shipment of money by me from 4724
the Federal Reserve Bank.

Q. Is there any mark on that exhibit that indicates that it was received by you, sir? A. Yes, it has my initial on it.

Q. Whereabouts, sir? A. Right down there (indicating).

Q. On the right-hand side? A. That's right.

Q. And what is the initial, sir? A. S.

Q. With a circle around it? A. With a circle around it.

Q. And there is, likewise, a check-mark there; who put that check-mark on there, sir? A. I did.

Mr. Gahagan: Did I understand that Mr. Pritchard was in the room? 4725

The Court: Yes. Do you have any other questions of this witness?

Mr. Gahagan: Yes, but I thought this was a good time to interrupt.

The Court: Mr. Seiwell, will you leave the stand for a moment?

Mr. Pritchard, resume the seat.

Mr. Gahagan: May the record indicate, Your Honor, that the exhibits previously offered subject to connection and subject to identification of the signature have now been identified?

4726 *Earl E. Seiwell—For Amici Curiae—Direct*

The Court: The record will speak for itself.

Now, Mr. Pritchard, Mr. Gray may resume his cross-examination, if he will.

• • • • • • • • • •

Mr. Gahagan: I was informed that I omitted this letter.

By Mr. Gahagan:

Q. I show you Government's Exhibit 19 (Amici Ex. 165), which is a letter of May 6, 1936, and ask you if you
4727 can identify the signature on that letter, sir. A. Yes; that is the signature of Joseph B. Smith.

Q. Of the Guarantee Trust Company? A. Marine Branch, Guarantee Trust Company.

Q. That is where you were employed at that time? A. At that time.

Q. And you work there now, too, sir? A. Yes, sir.

Q. Mr. Seiwell, in the ordinary course of the business of the Guarantee Trust Company, Marine-Atlantic Branch, in 1936, did you have any practice with respect to the maintenance of currency of certain denominations, sir? A. No, we didn't keep large bills on hand at that time.

Q. Did you have any practice at that time of keeping
4728 $1000 bills, sir? A. We did not.

Q. What was your practice in that regard, sir?

Mr. Gray: That is objected to, if your Honor pleases.

The Court: It is received subject to the exception of each defendant.

By Mr. Gahagan:

Q. What was your practice at that time, in May of 1936?

A. Receiving of large bills only in 1936——

Q. I cannot hear you.

Mr. Gray: I cannot hear.

Mr. Gahagan: I do not think the jurors can hear you.

The Witness: We would receive or get large bills only upon request.

By Mr. Gahagan:

Q. Upon request of whom, sir? A. Whoever wanted them—customers of the bank.

Q. From what source would you obtain large bills? A. From the Federal Reserve Bank of Philadelphia. 4730

Q. And what was the largest bill that you usually kept in your bank in the ordinary course of the business of your bank during that period? A. I would say a $100 bill.

Q. How were the requests made to the Federal Reserve Bank for large bills, and would you keep up your voice, I can hardly hear you, Mr. Seiwell. A. A bank officer would write to the Federal Reserve Bank making such a request.

Q. I show you Exhibits 19, 27, 29, 26, 28 and 25 (Amici Exhibits 165, 173, 175, 172, 174 and 171) and ask you if those exhibits are the type of requests that you refer to, sir. A. Yes, they are the requests—usual requests for bills.

Q. And you identify—can you identify those exhibits as coming from the bank, sir? A. Yes, sir; these all came from 4731 our bank.

Q. Now, in May of 1936 do you know whether or not the Parkwood Corporation had an account at the bank of which you were a teller, sir? A. It did.

Q. I show you a card and ask you what that is, sir (handing card to witness). A. That is a signature card of the Parkwood Corporation, and part of the bank records.

Mr. Gahagan: I offer this in evidence, sir.

(Bank signature card was marked Government's Exhibit No. 39.) (Amici Ex. 176.)

4732 *Earl E. Sciwell—For Amici Curiae—Direct*

Mr. Gahagan: May I take time out to show this to Mr. Gray?

The Court: Certainly, sir.

By Mr. Gahagan:

Q. Exhibit Number 30 (Amici Ex. 176), sir,—is that the signature card on that Parkwood account? A. That is the signature card on the Parkwood account.

Q. And who was the person who was authorized to sign those checks, sir? A. Eva Fox, president of the Parkwood Corporation, sir.

4733 Q. Did you handle most of the banking transactions of the Parkwood Corporation, sir? A. Yes, I believe I did.

Q. And with what person did you handle those banking transactions? A. Belle Fox—Miss Belle Fox.

Q. Now, who was Belle Fox? A. Belle Fox was the daughter of Eva Fox.

Q. I will have to stand back here, because you are practically whispering to me. A. Belle Fox is the daughter of William Fox and Eva Fox.

Q. And she is the person with whom you dealt as teller of the bank in connection with this Parkwood account; is that what you said? A. Yes, sir.

4734 Q. Now, I show you certain checks and ask you if you can identify those. (Group of checks handed witness.) A. Yes, sir, they are checks of the Parkwood Corporation, signed by Eva Fox as president of that corporation.

Q. Do the checks bear any identifying marks showing that you cashed the checks, sir? A. Yes, sir; they bear my teller's stamp and the date on which they were cashed.

Q. And do you know to whom you paid the money on those checks? A. Miss Belle Fox, with the exception of one for $2500, and that bears the endorsement of Mrs. Eva Fox—she apparently got the money on that one.

Q. Can the jurors hear that? And can you state whether or not each check, with the exception of the one for $2500

bears the endorsement of Belle Fox, sir? A. Each check bears the endorsement, with the exception of the one for $2500, of Miss Belle Fox.

Q. And each check is perforated—does that indicate anything to you, sir? A. That is the date it is paid by the bookkeeper; yes, sir.

Q. That check cleared through your bank? A. Yes, sir; on that date.

Q. And through your window? A. It cleared through my window on the date the stamp indicates—the day that the stamp indicates.

4736

Mr. Gahagan: I offer these checks in evidence.

The Court: They will be received.

Mr. Gray: Well, if your Honor pleases, I could hardly hear Mr. Gahagan, but it dawned on me that he said he offered these checks in evidence. We object to them, if your Honor pleases, as having nothing to do with this case.

The Court: I have received them subject to exception, and an exception to Mr. Kaufman.

Mr. Gray: May I say, though I should not do it, there is nothing on the face of them to show that they had anything to do with this case, and no testimony to establish it.

4737

The Court: I will receive them for the time being.

Mr. Gahagan: I am just sorting them to get the proper dates in order, sir.

Mr. Gray: Will your Honor permit us to make a general objection to this line of testimony for the same reason that we have objected to testimony of certain preceding witnesses; namely, that there has been nothing established to show even a prima facie case of conspiracy which would justify the presentation of this evidence at the present time.

The Court: Oh, yes, you may have such an exception, because I overruled that objection.

4738 *Earl E. Sciwell—For Amici Curiae—Direct*

(The group of checks produced by Mr. Gahagan were marked Government's Exhibits 31 to 41, inclusive.) (Amici Exhibits 177 to 187, inclusive.)

By Mr. Gahagan:

Q. Now, I show you Exhibits 31 to 41 (Amici Ex. 177 to 187) inclusive, which are checks and ask you if you can total those checks for me, please?

4739 Mr. Gray: That is objected to, if Your Honor please. He produces certain checks, not all checks, and then asks that those checks be totaled. In the totalization——

The Court: I will let the witness do that simply as a convenient method of bringing to our attention what appears in the exhibits already admitted over objection and subject to exception.

Mr. Gray: All right, sir.

By Mr. Gahagan:

Q. Just a computation, sir, of the total. A. Seventy-two thousand dollars.

4740

By the Court:

Q. Does that seventy-two thousand dollars include the twenty-five hundred dollar check? A. Yes, sir.

The Court: Haven't you had an opportunity to see them, Mr. Gray?

Mr. Gray: Just to glance at them, but we didn't think it worth while to examine them in detail, the checks, at the time Mr. Gahagan was conducting his examination.

Mr. Gahagan: That is agreeable to me, sir.

The Court: Oh, I didn't ask that question by way of criticism. I was afraid you had not had the opportunity.

Mr. Gray: We glanced at them.

Mr. Gallagher: What we want to have is a breakdown, if Your Honor please.

The Court: All right.

By Mr. Gahagan:

Q. Now, I show you Government's Exhibit 22 (Amici Ex. 168) and ask you again when you first saw that, sir. A. I first saw this when the shipment of one thousand dollar bills was opened. This was enclosed with the shipment. 4742

Q. What shipment of one thousand dollar bills? A. Ten one thousand dollar bills, of May 7th—May 8th, we received it on May 8th. This is dated May 7th.

By the Court:

Q. The year 1936? A. 1936, yes, sir.

By Mr. Gahagan:

Q. Now, when you say "we received it," what person, what teller, actually received the money? A. I received it, I received it myself.

Q. I see, the ten one thousand dollar bills? A. That is right. 4743

Q. Now I show you a long yellow sheet and ask you what that is, sir, three pieces of paper. A. That is my block sheet.

Q. At—— A. The Marine-Atlantic Safe Branch of the Guarantee Trust Company, Teller No. 3.

Q. For what date, sir? A. For May 8th, 1936.

Q. And is that record kept in the ordinary course of the business of your bank? A. Yes, it is.

Q. And the records that you rely upon, sir? A. Absolutely.

4744 *Earl E. Sciwell—For Amici Curiae—Direct*

Q. Does there appear any notation on there which corresponds to the exhibit, Government's Exhibit 22 (Amici Ex. 168), the receipt of the ten one thousand dollar bills, sir? Is that entered on your block sheet? A. Yes, it is, under general ledger credits, there is an item of ten thousand dollars.

Q. Well, would you explain—did you explain what a block sheet was? A. A block sheet is a portion or a run-off of the portion of a certain part of the day's business. They are picked up, the work is picked up at various intervals during the day and a block sheet is run on that par-
4745 ticular work which has been picked up to that time.

Mr. Gahagan: May I confer a moment, Your Honor?

By Mr. Gahagan:

Q. Is each sheet a block sheet? A. Each sheet is a separate block sheet, yes, sir.

Q. And do those three sheets comprise the whole day's work at your window? A. They comprise the day's work of May 8, 1936.

Q. And that is the complete day's work, is that right, sir? A. That is right, blocks 1, 2 and 3.
4746

Mr. Gahagan: I offer this exhibit in evidence, Your Honor.

The Court: Have you shown it to counsel?

Mr. Gahagan: I showed it to counsel before, Mr. Gray. All right, sir.

The Court: It may be received.

(Three block sheets of the Marine-Atlantic Safe Branch of the Guarantee Trust Company, Atlantic City, for May 8, 1936, were marked Government's Exhibit 42 (Amici Ex. 188.))

Mr. Gahagan: 42, sir.

Mr. Gray: All number 42?

Mr. Gahagan: Yes, sir, three sheets.

May I read Government's Exhibit 35 (Amici Ex. 181) to the jury, sir? Check number 142, on the Guarantee Trust Company, Atlantic City, New Jersey, May 8, 1936, pay to the order of cash, on Parkwood Corporation, five thousand dollars, $5000, Parkwood Corporation, Eva Fox, president. Endorsements, Parkwood Corporation, Eva Fox, president; Belle Fox, underneath. There is some other writing on the check. 4748

By Mr. Gahagan:

Q. Was that on the check, that other writing on the check, when you received it, sir, the G. J. there, Grand Jury exhibits? A. No, sir, I don't think it was.

Q. And when you received the check was that signature, Belle Fox, on it? A. Yes, sir.

Q. Was that check cashed, this five thousand dollar check cashed at your window, sir? A. It was, May 8th, 1936.

Q. Can you find a corresponding item in your block sheets in Government's Exhibit 42 (Amici Ex. 188) in evidence corresponding to the check of May 8th in the amount of five thousand dollars, sir? A. Yes, sir, on May 8, 1936, under home checks, checks cashed, there is an item of five thousand dollars, the only one on that date. 4749

Q. Could you point that out to me, sir? At the top? A. At the top, home checks.

Q. And I see writing on there, Parkwood Corp., who put that on, sir? A. I did, Mr. Gahagan.

Q. And this "S" on the blue ticket is your "S", is that your signature? A. That is my "S".

Mr. Gahagan: May I show these three to the jury?
The Court: You may.

(The blue ticket, check and block sheets were shown to the jury.)

Mr. Gahagan: May I ask one question while the jury is looking at the check?
The Court: Yes, indeed.

By Mr. Gahagan:

4751 Q. There is a circle and a stamp with E. E. S. Are those your initials, sir? A. They are my initials, yes, sir,—you mean the red rubber stamp occurring on the face of the check?

Q. Yes, sir, on the face of the check. A. Yes, sir.

(The jury concluded the examination of the exhibits.)

By Mr. Gahagan:

Q. Going to your practice for a moment, sir, what was the practice in receiving cash to be delivered to the tellers at the bank in 1936, sir? A. You mean shipments received
4752 from the Federal Reserve Bank?

Q. Yes, sir. A. The shipment having come into the Post Office, the runner or bank messenger would bring it from the Post Office to the bank and deliver it to one of the tellers.

Q. And in this particular case, referring to Government's Exhibit 22 (Amici Ex. 168), was Mr. Joseph B. Smith's signature put on before or after the "S" which you put on, sir? A. After I received this shipment I checked the contents, initialed the slip, and handed it to Mr. Joseph B. Smith for his official signature to have—and this slip returned to the Federal Reserve Bank, denoting that we have the shipment of currency in our possession.

Q. And then those ten one thousand dollar bills were a part of your cash on May 8, 1936, sir? A. After I received that shipment those bills became a part of my cash.

Q. What cash did you pay out to Miss Belle Fox on this check on May 8, 1936? A. Five one thousand dollar bills.

Q. Were they part of the ten one thousand dollar bills that you received, sir?

Mr. Gray: Wait a minute. If he knows this of his own knowledge, if Your Honor please, and can definitely state it, I haven't any objection, and I would not rise to have made this objection except for other information that I have on the subject. 4754

By the Court:

Q. You understand, Mr. Seiwell, that you are to answer this question of your own personal knowledge. Have you such personal knowledge? A. Yes.

The Court: You may proceed with the question.

By Mr. Gahagan:

Q. Were they part of the ten one thousand dollar bills? A. They were part of the ten one thousand dollar bills.

Q. And those were the ten one thousand dollar bills received from the Federal Reserve Bank which you receipted on this blue slip, Government's Exhibit 22 (Amici Ex. 168)? 4755
A. Yes, sir.

Mr. Gahagan: May I confer?

The Court: Certainly.

Mr. Gahagan: I have no further questions, Your Honor. You may examine.

Cross Examination by Mr. Gray:

Q. Mr. Seiwell, you testified in the last trial did you not? A. Yes, sir.

4756 Q. And when was the matter about which you testified today first called to your attention? A. Sometime in 19——

Q. By anybody. A. In 1940.

Q. Do you know what time in 1940? A. I couldn't definitely state, sir, no, sir.

Q. Can't you fix it any more definitely than sometime in 1940, whether it was spring, summer, or what month it was? A. It was in the summertime.

Q. Sometime in the summer? A. Yes, sir.

Q. And does summertime to you mean June, July and August? A. I believe it was around July.

4757 Q. You think it was around July, all right. And with respect to the last question, almost the last, that was asked you and you answered, you have to depend on your memory to know whether you handed Eva Fox five one thousand dollar bills, do you not? A. I believe I do, yes, sir.

Q. You do? A. Yes, sir.

Q. Now, in order to test that memory a little bit I am going to take these other checks that have been offered in evidence and run, I think, Exhibits 31 to 41, (Amici Ex. 177 to 187), I understood, but I don't find those markings—

Mr. Gahagan: They are on the front, Mr. Gray.

Mr. Gray: Oh, I see.

4758 *By Mr. Gray*:

Q. —and show you Exhibit 31 (Amici Ex. 177), a check for twenty-five hundred dollars. What kind of money did you give her on that? A. That was bills of denomination not larger than a hundred dollars.

Q. Do you remember that personally? A. Yes, sir.

Q. Perfectly, do you? A. I do.

Q. All right. Exhibit number 32 (Amici Ex. 178), which is for five thousand dollars, tell me what denomination you gave her as to that. A. They also were of denominations not larger than one hundred dollars.

Q. Yes, but let's be exact. What was the denomination? A. I can't state for certain what the denominations were. They couldn't have been over a hundred dollars.

Q. Your memory won't go back that far? A. We didn't have hundred dollar bills, over hundred dollar bills in the bank at that time.

Q. All right, that is your answer as to that. A. That is right.

Q. And I suppose that would be the same answer as to Exhibit number 33 (Amici Ex. 179), which is another check that I show you, which is dated May 6th, is that right? A. That is right. 4760

Q. And the same as to Exhibit 34 (Amici Ex. 180), which is a check dated May 7th, is that right? A. That is right.

Q. Now, then, let's come to the time when you had thousand dollar bills. I show you Exhibit number 36 (Amici Ex. 182), which is a check dated May 9th, for twenty-five hundred dollars. What were the denominations of the bills you gave her in payment of that check? A. Two one thousand dollar bills.

Q. You are sure of that? A. Because we had thousand dollar bills in the bank.

Q. I know, but are you sure you gave her two one thousand dollar bills? A. Yes, because Miss Fox ordered thou- 4761
sand dollar bills.

Q. I am calling just on your memory. Do you remember giving her two one thousand dollar bills? A. After we got the thousand dollar bills Miss Fox got thousand dollar bills.

Q. I am asking you whether on that check, which is Exhibit number 36 (Amici Ex. 182), you recollect giving her one thousand dollar bills. A. Yes.

Q. You have a perfect memory and recollect that? A. I remember giving her thousand dollar bills.

Q. All right. Now, I show you Exhibit number 37 (Amici Ex. 183), for twenty-five hundred dollars, and ask you

whether you know what denomination bills you gave her on that. A. They were thousand—they must have been thousand dollar bills, too.

Q. Try to keep your voice up. Please don't argue with me as to what they must have been. What I want to know is whether you have a recollection of what bills you gave her on that check. A. Yes, one thousand dollar bills.

Q. You are sure of that? A. Yes, sir.

Q. Were you sure of it a minute ago? A. Yes, sir.

Q. All right. I show you Exhibit number 38 (Amici Ex. 184), a check for twenty-five hundred dollars, and ask
4763 you what were the denominations of the bills you gave her then. A. Thousand dollar bills.

Q. You have a clear recollection of that? A. Thousand dollar bills.

Q. No doubt in your mind at all? A. Not a bit.

Q. And having a recollection of giving her the two one thousand dollar bills, do you recollect how the other five hundred was made up? A. One hundreds, most likely.

Q. Well, I don't want the "most likely", I want to know whether you recollect, and if you don't, please say so. A. Well, if I had hundreds I gave her hundreds. If I had fifties, she got fifties, Mr. Gray.

4764 Q. Do you recollect what you gave her? A. No, I do not, for the balance.

Q. But you recollect the thousand dollar bills very clearly? A. Thousand dollar bills.

Q. And I show you Government's Exhibit number 39 (Amici Ex. 185), which is a check for fifteen thousand dollars. Do you recollect what kind of bills you gave her then? That is check number 39 (Amici Ex. 185), fifteen thousand. A. One thousand dollar bills.

Q. Now, you are positive of that? A. Mr. Gray, I am positive because of the fact that Miss Fox ordered one thou-

sand dollar bills and we ordered—she ordered them for herself only, and when she ordered them, we certainly wouldn't have given them to anyone else.

Q. In other words, that is your reason? A. That is the reason I am sure.

Q. Now, what I want to know—— A. And I am sure.

Q. I beg your pardon? A. And I am sure that I gave her one thousand dollar bills.

Q. All right, but what I want to know is aside from your reasoning it out to satisfy your own mind, have you any recollection of having given her one thousand dollar bills? A. Yes, I have recollection of giving Miss Fox one thousand dollar bills. 4766

Q. For that check? A. Yes.

Q. That is Exhibit 39 (Amici Ex. 185)? A. That is right.

Q. So you do not need to resort to your reasoning, you remember distinctly giving her—— A. Thousand dollar bills.

Q. —Fifteen thousand dollars in thousand dollar bills.

Q. I show you Exhibit 40 (Amici Ex. 186) another check, June 16, for fifteen thousand dollars, and ask you whether or not you gave her thousand dollar bills as to that. A. Yes, sir, I am sure I gave her thousand dollar bills on that, too. 4767

Q. You are clear in your recollection? A. I am.

Q. I show you Exhibit 41 (Amici Ex. 187), a check for seventeen thousand dollars, and ask you whether or not—what denomination of bills you gave her in that case. A. One thousand dollar bills.

Q. Sure of that? A. I am sure.

Q. Recollection is clear? A. Recollection.

Q. Did you get any one thousand dollar bills from any place other than the first, the Federal Reserve Bank in Philadelphia? A. No, sir.

Q. Do you know that the aggregate of thousand dollar bills which you said you gave her amounts to more than the thousand dollar bills that you got from the Federal Reserve during that period of time? Do you know that? A. No, I do not.

Q. No, I didn't think so. And don't you recall that when at the last trial we examined you with respect to the checks that you said that you were unable to recollect the denominations of any of the moneys that you gave her with respect to any of these checks except the one of May 8th? Didn't you say that? A. I don't know, I don't recall, Mr.
4769 Gray.

Q. Well, now, we will see. First, let me ask you with respect to the check of May 8th about which you said in response to Mr. Gahagan's question that you gave Miss Fox five $1,000 bills. Is that testimony of yours based on the fact that you had ten $1,000 bills, or is it based on your distinct recollection of having handed her five $1,000 bills? A. It is based on the fact that I handed her $1,000 bills.

Q. You distinctly recollect it? A. No. We had the $1,000 bills in the bank at that time, and I gave her $1,000 bills for her check because she had requested it, Mr. Gray, before that.

4770 Q. You are reasoning the matter, Mr. Seiwell, but have you a personal recollection of having handed her five $1,000 bills for that check? A. No. To the best of my recollection, I gave her $1,000 bills.

Q. Have you any recollection on the subject? A. It seems to me that I recall her being in at the time, and that she requested the $1,000 bills that we had ordered.

Q. You told me that. A. I am referring to that particular check, Mr. Gray.

Q. I understand. A. Because of the fact that she had gotten several checks cashed before that, and they were in small denominations, and she wanted some in larger denomination bills when she cashed her checks.

Q. Have you—please answer this yes or no, and then make any explanation, if you wish—have you any personal recollection of having given her five $1,000 bills for that check of May 8th, 1936? A. No personal recollection.

Q. No? A. No personal recollection.

Q. And your testimony is simply based on the fact—two facts, if you please—that she ordered $1,000 bills from you, and asked you to get some; and, second, that you then had ten $1,000 bills in your possession, is that right? A. What was that again, please?

Q. Having no personal recollection, your answer is based on two things, that she had requested—I will make it three things—that she had requested $1,000 bills, that you had ordered some, and that you had received some, and it is on the basis of that, and that, alone, that you say you gave her five $1,000 bills, isn't it? A. Because of the fact, Mr. Gray, that she had ordered the bills is what makes me positive that I gave her five $1,000 bills. 4772

Q. That is what I say. It is based simply on the fact that she had asked you to get some $1,000 bills? A. Yes, sir.

Q. And then your recollection is that you gave her five $1,000 bills? A. Yes, sir.

Q. But you have no personal recollection of it, have you? A. That's right.

Q. Didn't you testify—— 4773

The Court: Just a moment.

Mr. Gahagan: I can hardly hear, myself, sir, and I notice some of the jurors might have difficulty in hearing, too.

By Mr. Gray:

Q. Try to keep your voice up, Mr. Seiwell, please. Didn't you testify—page 683—at the last trial, as follows:—I am reading a question and your answer, and it refers to this check of May 8th——

4774 "Q. That your recollection is based on the fact that you had ten one thousand dollars bills and not on any recollection that you have of having actually handed her five one thousand dollar bills. You have no recollection of that, have you? A. No, sir."

That is correct, isn't it? A. Mr. Gray, I believe I was pretty well confused at that last trial, I will admit.

Q. I don't know that you were. A. I was confused by the way you asked the questions. I have read over the evidence and——

4775 Q. Oh, you have read it over?

By the Court:

Q. Let's not get confused this time. You were just asked whether you so testified before, did you? A. That's right.

The Court: All right.

By Mr. Gray:

Q. When did you read the evidence over? A. I had read it over.

Q. When? A. About a week ago.

4776 Q. What did you do that for? A. At the request of Mr. Gahagan.

Q. Oh, did he tell you why he wanted you to read it over, Mr. Seiwell? A. No.

Q. What did he say to you when he told you to read it? A. He just wanted me to read it over.

Q. And he gave—— A. And I pointed out several things which I thought I could have answered differently if I hadn't been confused.

Q. You thought you were incorrect about several things? A. Yes, I did.

Q. And you are confused today? A. Well, I think it is a little bit more clear today, Mr. Gray.

Q. Will you tell us what it was that you testified to wrongly when you were testifying the last time? A. I didn't testify wrongly, Mr. Gray.

Q. Then maybe I don't understand you. You said differently, you could have testified differently. Differently means that you want to correct something, I take it. A. Well, I could have testified a little differently, yes, sir.

Q. All right, we will pass it. But in order that you might not be confused this time, you read the testimony over? A. I wouldn't say that, sir. I didn't know I could read it 4778
over until it was handed to me.

Q. In other words, you thought it wasn't proper for you to read it over, but Mr. Gahagan gave it to you to read over? A. No, I didn't know there was a copy available to read over. I was rather surprised when it was handed to me.

Q. You read it over carefully? A. I glanced over it, yes, sir; I read it; I wouldn't say carefully, I didn't study it.

Q. Did you read it more than once? A. No, sir.

Q. When did you read it? A. Last Sunday.

Q. Did you look at it again this morning? A. No, sir.

Q. Last night? A. No, sir.

Q. What did you do with the copy you had? A. Returned 4779
it.

Q. With comments? A. No; oral comments.

Q. What? A. Just oral comments.

Q. With oral comments, all right. Now, then, having talked about the check of May 8th, I want you now to go on to the other checks. You have told us today that you can clearly recollect giving her $1,000 bills. I am passing right on from 683 through the other pages! By the way, I want to ask you a couple of other questions. You had other tellers in your bank? A. Yes, sir.

Q. And from time to time, of course, tellers would exchange moneys; I mean by that, you might want certain

denominations that they had, and they would be turned over to you? A. Yes.

Q. And they might want something you had, and it would be turned over to them? A. Yes.

Q. And at times would certain of your moneys be taken from your branch down to the other bank? A. No, sir.

Q. That was never done? A. No, sir.

Q. It was kept as a separate institution? A. That's right.

Q. By the way, where were you when you received that copy of your testimony? A. In Atlantic City.

Q. In Atlantic City? A. In Atlantic City.

4781 Q. At your home? A. No.

Q. Where? A. At the Claridge Hotel.

Q. Were you sent for? A. Yes, sir.

Q. By whom? A. Mr. Gahagan.

Q. To come to the Claridge? A. Yes, sir.

Q. How long did you spend there with him? A. Several hours.

Q. Going over your testimony? A. No, sir.

Q. Well, if what you did was private and had nothing to do with this case, I don't want to know anything about it.

Mr. Gahagan: He may testify to the whole conversation, everything that occurred, sir, and what he

4782 was doing. Go right ahead.

Mr. Gray: Well, I will tread carefully.

By Mr. Gray:

Q. Was the testimony given to you when you first went there? A. Yes.

Q. And were the couple of hours that you were there spent in really reading it over, or looking at it, or anything you may want to call it? A. No, not all of the time.

Q. How much of the time? A. Part of the time.

Q. How much? A. Oh, I couldn't say; possibly a half an hour or three-quarters of an hour.

Q. Did you discuss some of your testimony with Mr. Gahagan? A. Several points.

Q. And that is the time that you read it, on Sunday, was it? A. Yes, sir.

Q. Who was with Mr. Gahagan? Anybody? A. Mr. Sullivan.

Q. What time of the day was it? A. In the morning.

Q. By the way, what time of the day was it you got these ten $1,000 bills on May 8th from the Federal Reserve Bank of Philadelphia? A. In the morning.

Q. What hour in the morning, do you know? A. Before noontime. 4784

Q. Do you know what time before noontime? A. I couldn't definitely state, sir.

Q. What time did you cash the check for $5,000 for Miss Fox? A. In the afternoon.

Q. Are you sure of that? A. Yes, sir, because it appears in my last block.

Q. In other words, having divided your block sheets into periods during the day and it is in your last block, therefore, it must have been the afternoon? A. It must have been the afternoon.

Q. Now, I show you the check that is marked Government's Exhibit 36 (Amici Ex. 182), which contains another marking at the top, of Government's Exhibit 64—— 4785

Mr. Gray: By reason of the language used in the question, I am compelled, if Your Honor pleases, to call his attention to that other number.

By Mr. Gray:

Q. That is one of the checks dated May 9th about which you said you had a clear recollection of having given her $1,000 bills, is that right? A. Yes, sir, I believe it is.

Q. I want to read you and ask you whether or not you didn't testify as follows at the last trial, page 685. I will

read you a preliminary question so that you may get the full sense of the matter. You had made an answer: "A. I believe that I did most of the business for her," referring to Eva Fox.

Question——

Mr. Gahagan: No, that is not referring to Eva Fox, Your Honor, he made that mistake before.

Mr. Gray: Belle Fox is right.

The Court: Good. Go ahead.

4787 *By Mr. Gray:*

"Q. You think you did. Is that your reason for thinking that she got large bills with respect to Exhibit 64, which I have shown you, is because of your thought or recollection, whichever way you put it, that after a certain period of time she asked you for larger bills? A. That's right.

Q. —"

Now referring to this check——

"Q. You have, however, no recollection in that twenty-five hundred dollars in cash, that twenty-five hundred dollar check of having given her one thousand dollar bills, have you? A. No."

4788

Did you testify that way at the last trial? A. I believe I did, if that is the record, Mr. Gray.

Q. That is the record. If I didn't read it correctly, these gentlemen will pretty soon tell me. You admit, then, you testified that way at the last trial? A. Yes, if that is the record, Mr. Gray.

Q. That is the record. I show you now the check of May 12, 1936, which is marked in this case as Government's Exhibit 37 (Amici Ex. 183), and which was marked formerly Government's Exhibit 65, and ask you whether or not with respect to that check you did not testify at the last trial as follows, going down to 685 and over to 686:

"Q. I show you Exhibit 65, dated May 12th, 1936, for $2500, endorsed by Parkwood, and by Belle Fox as vice president, and then by Belle Fox below that again, and ask you when you cashed that check whether you have any recollection of giving her thousand dollar bills. By recollection I mean your recollection now that you cashed it for her to give her thousand dollar bills. A. I don't recall giving her thousand dollar bills, but as to her request she got thousand dollar bills for the check.

"Q. You mean by that what you said a moment ago, that you have no recollection of giving her thousand dollar bills, but you have a recollection of her having asked for large bills in connection with large checks that she cashed? A. That's right." 4790

A. That's right, Mr. Gray.

Q. That is the way you testified then? A. That's right, and that is——

By the Court:

Q. He asked you whether you testified that way before, and it will save a lot of time if you will answer his question. Did you testify that way before? A. Yes, sir. 4791

The Court: You answer the question, then you won't prolong the examination.

By Mr. Gray:

Q. Now, you have a clear recollection of giving her $1,000 bills, have you? A. Mr. Gray, I have a recollection of giving her $1,000 bills because of the fact that we had them there for her to give them to her.

Q. I have already examined you and handed you each one of those checks, and as to each one of those you said

that you had, independently of anything else, a clear recollection of giving her $1,000 bills. Do you take that back? A. I have a recollection——

Q. Do you take that back? A. Mr. Gray, I have a recollection of giving her $1,000 bills because of the fact that she ordered $1,000 bills. We got them for her, alone.

Q. Mr Seiwell, if you please, I carefully examined you with respect to these checks before I called your attention to the testimony, and I asked you whether or not you had a clear personal recollection of having given her $1,000 bills in connection with these checks, and you said yes. Do you
4793 want to change that. A. I don't have a clear recollection of giving her $1,000 bills; I have a recollection at some time of giving her $1,000 bills.

Q. All right, then. Referring to this check of May 12th, do you have, or do you not have a clear recollection of giving her $1,000 bills? A. I do not have a clear recollection, Mr. Gray.

Q. Have you a personal recollection of it at all. A. I have a personal recollection of it.

Q. All right. I am going on to Government's Exhibit 38 (Amici Ex. 184), which is marked also at the top as Government's Exhibit 66, a check dated May 14, for $2500.
4794 I will ask you first, so that we get it clear, you have said you have a personal recollection of having given her two $1,000 bills on that occasion. Have you still that recollection. A. Did you say personal recollection?

Q. Yes. A. I have a recollection, Mr. Gray; I don't mean a personal recollection.

Q. All right, let me ask you if you testified the last time as follows, page 687:

> "Q. I show you a check marked Government's Exhibit 66, May the 14th, 1936, for $2500, endorsed Parkwood, Eva Fox and Belle Fox, and aside from what you have already told us, have you any personal

recollection of having given her any thousand dollar bills in connection with that check? A. I have not."

Is that the way you testified? A. I believe it is, Mr. Gray, if you are reading it from the record.

Q. I am reading it correctly. Now, Mr. Seiwell, I am going to show you Government's Exhibit 39 (Amici Ex. 185), which is marked, also, at the top, Government's Exhibit 67. Now, first, I want to say if I have your testimony today correctly about that, you said you remember cashing that for her, didn't you? A. Yes.

Q. You said you gave her $1,000 bills, didn't you? A. 4796
Yes.

Q. You said you remembered that, didn't you? A. I have a personal recollection of it, Mr. Gray.

Q. Well, have you any recollection of giving her $1,000 bills? A. Yes.

Q. That recollection is based on your memory, you mean? A. Yes.

Q. All right, now, I will read you your testimony and ask you whether you testified as follows, at the last trial, with respect to that check, at the bottom of page 687:

"Q. . . . I show you what is marked Government's Exhibit 67, a check dated June the 11th, 1936, to the order of cash, for $15,000, endorsed Eva Fox, president, and Belle Fox, and ask you whether you have any recollection of having given her thousand dollar bills in connection with the cashing of that check? Do you remember cashing it for her? A. No. 4797

Q. No. You don't remember even cashing these others, do you? A. I don't remember cashing them; but because they have my stamp on them, I have cashed them.

Q. Right. And you have no personal recollection as to any of them? A. I have a vague recollection of Miss Fox doing business with the bank."

Is that the way you testified? A. I believe it is. You are reading from the record.

Q. So, outside of the matter of the checks, your recollection that she was even doing business with the bank is vague, isn't it? A. No, sir.

Q. All right, but you testified as I have read it, didn't you? A. Yes, I believe I did.

Q. All right. (After a pause.) Mr. Seiwell, I ask you whether or not when you cashed that check for $15,000 you had any $1,000 bills in your bank. A. May I see my block sheets? I do not have any memory.

4799 Q. Sure; see anything you want. A. Is the block sheet there for June—is that June? What date is that, Mr. Gray?

Q. June 11th. A. I do not believe it is here.

Q. 1936 ——

Mr. Gahagan: Would the requests for $1000 bills be of any assistance?

Mr. Gray: $15,000, June 11th.

The Witness: May I see the check?

Mr. Gray: Mr. Gahagan, would you give me the records by Pritchards showing the shipments of $1000 bills? You have taken it.

Mr. Gahagan: Anything we have, but Mr. Pritch-
4800 ard was the person you sent out to look up the old records.

Mr. Gray: I don't want Mr. Pritchard, but you offered some things in evidence and you have taken them back after you have offered them.

Mr. Gahagan: Anything we have here.

Mr. Gallagher: 25, 26, 27, 28. (Amici Ex. 171, 172, 173, 174.)

Mr. Gahagan: Would you perhaps be referring to these letters up here with Mr. Seiwell, sir?

Mr. Gray: Well, I can possibly get what I want from them.

Mr. Gahagan: Are those the exhibits?

Mr. Gray: This will do for our purposes.

Mr. Gahagan: So our record may be straight, are these the letters?

Mr. Gray: Instead of inquiring, I will use these from the record myself in another way.

The Court: That leaves on record a question unanswered.

Mr. Gray: I will withdraw the question.

The Court: And the question is now withdrawn.

By Mr. Gray: 4802

Q. Now, I show you a check dated June 16, 1936, for $15,000, which is Government's Exhibit 40 (Amici Ex. 186), and is marked at the top as "Government's Exhibit 68." Have you a personal recollection of having cashed that check? A. I have a recollection of cashing the check, Mr. Gray.

Q. Personal recollection? Do you remember it? A. No personal recollection; I have a recollection of cashing the check.

Q. You mean simply by reason of the fact that there is something on the check that indicates you cashed it? A. That is right. 4803

Q. But that is not a memory on the subject. A. Not a memory, no, sir.

Q. I ask you whether at the last trial you did not testify as follows, page 688:

> "Q. And I show you Exhibit 68, a check to the order of cash, June the 16th, 1936, for $15,000, endorsed Eva Fox, president, and Belle Fox."

That is following what you call your other testimony.

> "You make the same answer to that as you did the others, don't you? A. I do."

Then when I showed you Government's Exhibit 69, which I will now show you, and which is now Government's Exhibit 41 (Amici Ex. 187)—marked at the top "Government's Exhibit 69"—for $17,000, I ask you whether you did not testify as follows with respect to that check, page 688——

"Q. I show you Government's Exhibit 69, a check dated June the 29th, 1936, to the order of cash, for $17,000, bearing similar endorsements. I suppose you make the same answer as to that? A. I do."

4805 Did you testify as I have read? A. I believe I did, sir.

Q. I ask whether or not you want to change any of the testimony you have given today in which you indicated that you had a personal recollection of having cashed these checks and having given—— A. I believe I misunder——

Q. —Miss Belle Fox $1000 bills? A. I believe I misunderstood on your "personal recollection." I have the recollection of cashing the check, Mr. Gray.

Q. You cannot say as to any check that you gave Eva Fox, that you remember giving her $1000 bills, can you? A. Yes.

Q. Which one? A. I cannot pick out the certain check, but I gave her thousand-dollar bills on several checks, Mr.

4806 Gray.

Q. Oh, you gave her thousand-dollar bills on several checks? A. Yes.

Q. You mean on several occasions when she cashed checks? A. That is right.

Q. But you cannot pick out any particular check in any of these from May 2nd down to whatever this last date is on Exhibit "69"—down to June 29, 1936, and say as to any particular check that you gave her $1,000 bills, can you? A. May I see all of the checks, please?

Q. Yes, surely, these are all I have. Then there is one that laid over here.

(To the Court): I am corrected by my associates that I said "Eva Fox" instead of Belle Fox. I want to say "Belle Fox."

Mr. Gahagan: There is no question.

The Court: If you do not understand the question it may be read to you.

The Witness: I want the question.

The Court: Read the question.

(Question read by the reporter as follows:

"Q. But you cannot pick out any particular check in any of these from May 2nd down to whatever this last date is on Exhibit '69'—down to June 29, 1936, and say as to any particular check that you gave her $1000 bills, can you?") 4808

The Witness: Yes, Mr. Gray, this one of May 8th for $5000.

By Mr. Gray:

Q. In other words, you pick out the one of May 8th and definitely say you have a personal recollection as to that, when you have no personal recollection as to any of the others? A. I have a recollection as to this check; yes, sir.

Q. Your recollection as to that check—and you and I seem to differ on the question as to the meaning of the word "recollection" is based—let me say, your testimony as to that check is based on the fact that you had ten $1000 bills in your bank and that Eva Fox had requested $1000 bills be secured for her. A. That is right, Mr. Gray. 4809

Q. But as far as your memory is concerned, you have no recollection of it, have you? A. As far as my memory is concerned, no, sir; I don't remember handing her $1000 bills.

Q. Right—that is what I wanted to know.

Mr. Gahagan: I do not understand that, sir.

Mr. Gray: Well, I am sorry.

4810 *Colloquy*

The Witness: Mr. Reporter, did I say "I do" or "do not" on that—I mean I do, Mr. Gray, because of the fact——

The Court: Wait a minute.

Mr. Gray: I have no objection——

The Court: Wait a minute.

The Witness: Your Honor.——

The Court: Wait a minute, please. If you want to know what the reporter has, the reporter may read the last two or three questions and answers to you, but don't add to the record by making statements now.

4811 I do not mean to be hard on you, but if you want to know what the reporter has, let the reporter read it.

Will you do that, Mr. Reporter?

(The reporter read the following questions and answers:

"Q. Your recollection as to that check—and you and I seem to differ on the question as to the meaning of the word 'recollection' is based—let me say, your testimony as to that check is based on the fact that you had ten $1000 bills in your bank and that Eva Fox had requested $1000 bills

4812 be secured for her. A. That is right, Mr. Gray.

"Q. But as far as your memory is concerned, you have no recollection of it, have you? A. As far as my memory is concerned, no, sir, I don't remember handing her $1000 bills.

"Q. Right—that is what I wanted to know.")

The Witness: Mr. Gray, on that——

The Court: Wait a minute. What do you want to do now? Do you want to change your answer?

The Witness: I wanted to change it on that part. I did not mean "I do not"; I mean "I do" remember on that first day, May 8th, your Honor.

The Court: All right.

The Witness: I do not mean, Mr. Gray, "I do not."

By Mr. Gray:

Q. You are telling us now, today, on August 30, 1941, that you distinctly recollect——

The Court: I hope we won't be here on August 30, 1941.

Mr. Gray: Pardon me. On July 30, 1941. I do not feel any too good myself, sir, right now, and maybe I am not thinking clearly—clear enough, though, I guess. 4814

By Mr. Gray:

Q. You are telling us now on July 30, 1941, that you have a very clear recollection that on May 8, 1936, in cashing a check for $5000 you handed Belle Fox five $1000 bills. You have a clear recollection of that? A. May I explain—yes, I do.

Q. You have been explaining right along; go ahead.

The Court: Of course, that is what he wants you to do, is keep on explaining. Now, if you would answer the questions put to you, you would get along much better. 4815

The Witness: Your Honor, on that morning when I received those bills and Miss Fox cashed this check in the afternoon, she was glad to get the $1000 bills. She says, "I see"—if I remember correctly, that she said—"you have my thousand-dollar bills for me."

Mr. Gahagan: Can the jurors hear that answer?

The Court: I don't know.

By Mr. Gray:

Q. She was pleased to get it, though, and she said she was glad to see you had the thousand-dollar bills for her.

Now, that is your—— A. In recalling the conversation, Mr. Gray.

Q. In all the times you have been on the stand, both before—at the earlier trial, and examined by Mr. Gahagan and examined by me—and examined again today by Mr. Gahagan and examined again by me, this is the first time you have ever made that statement, isn't it? A. I don't recall.

The Court: Excluded in that form, if you object to it. Do I understand you object?

4817 Mr. Gahagan: I object to it.

The Court: Sustained.

Mr. Gray: Will your Honor grant me an exception, and I will try to put it in another form.

The Court: Oh, yes; you may bring out the fact if you want to, but you cannot argue your case on cross examination.

By Mr. Gray:

Q. You have never before, in the first trial or in this trial, made that statement before, have you? A. I do not think so, Mr. Gray.

Q. You do not think—— A. No, sir.

4818 Q. Did anything that happened last Monday in Atlantic City cause you to make that statement? A. No, sir.

Q. Well, when I was asking you about your personal recollection a little earlier, why didn't you tell me that then? A. I couldn't say, Mr. Gray.

Q. Can't say—all right. And now you distinctly recollect Miss Belle Fox coming in there and saying how pleased she was that she was getting $1000 bill, and that you had acceded to her request. A. Yes, I do. That was the first time she had to take larger—I mean had to take smaller denominations for the first few checks—she was glad to get the larger denominations on the next check. Yes, sir; I do remember that.

Q. You remember that was on May 8th? A. This was the first check cashed after that, yes.

Q. What day of the week was it, do you know? A. No, I couldn't tell you, sir.

Mr. Gray: Your Honor will indulge me a moment, sir?

The Court: Mr. Foreman, ladies and gentlemen, I haven't forgotten the promised recess, but I thought we would take that fifteen minutes at the end of the afternoon because I did not want to interrupt the examination.

4820

By Mr. Gray:

Q. Have you any of the other records with you of these accounts of Belle Fox and the Parkwood Corporation? A. No, I haven't, Mr. Gray.

Mr. Gray: I want to say something to your Honor, and possibly I had better say it at side bar. I will ask Mr. Gahagan to come up.

The Court: All right; all of counsel will come to the bench.

(Conference at side bar.)

The Court: The jury may be excused until tomorrow morning at ten o'clock. I am going to be just a few minutes longer. I am going to sit a few minutes longer. I am not adjourning the court. 4821

(The jury was excused at 4.02 P.M.)

EARL E. SEIWELL, Recalled.

Cross examination by Mr. Gray (Continued):

Q. Mr. Seiwell, the account in the Marine Branch of the Guarantee Trust Company about which you were talking

when you were last on the witness stand, and with reference to which you produced certain checks, was the account of the Parkwood Corporation, wasn't it? A. It was.

Q. And the Parkwood Corporation account was one in which the checks were signed by Eva Fox, is that right? A. They were signed by Eva Fox.

Q. Well, that is the signature that was required to draw money from that account, is that right? A. That is right.

Q. And did you know Eva Fox? A. I don't believe I do.

Q. No, in other words, all of the transactions with the bank took place with Belle Fox, is that right? A. That is

4823 right.

Q. And have you produced this morning the ledger account or ledger sheet of that account of the Parkwood Corporation? A. I have, Mr. Gray, up to the time that the Government had some ledger sheets, I can't produce those, but I have the ones prior and after that.

Q. The Government has the others, have they? A. Has a few ledger sheets.

Q. Well, let's see what you have.

(The witness produced ledger sheets.)

The Witness: Do you want the Parkwood corpora-

4824 tion first?

By Mr. Gray:

Q. Yes, tell us, in other words, what period of time those ledger sheets cover. A. These ledger sheets that I have here cover from October 8, 1936—I am sorry—September 3, 1936, until the first of June, 1937, which is including all of 1936.

Q. I think you said, then, said the other day, that the account was opened in March, on March 2nd? A. That is right.

Q. So that from the time the account was opened down to September 3rd—— A. September 3rd.

Q. —The Government has the sheets? A. I believe they have, yes, sir.

Mr. Gahagan: These are the ones we offered to Mr. Gray the other day, Your Honor, you recall, at the bench.

Mr. Gray: I am sorry, I don't remember seeing them, but that doesn't make any difference, if you let us have them now, that is all I want.

(Mr. Gahagan produced ledger sheets.)

By Mr. Gray: 4826

Q. Were the checks that you produced on Wednesday all of the checks that were drawn and cashed over the counter during the period of time of the dates of those checks? A. I didn't understand, Mr. Gray.

Q. Well, the first of those checks was dated a certain date, and the last was dated a certain date. Were those checks that you produced all of those that were cashed over the counter during that period? A. I believe they were a portion of the checks cashed over the counter.

Q. Where is the rest of them? A. I don't have them, sir. They are returned with the statement to the customer. 4827

Q. Oh, that is right, you wouldn't have had those checks that were produced. Then there were other checks cashed over the counter on the Parkwood Corporation account by Belle Fox during that period, were there? A. I believe that —that wouldn't show on that sheet, sir. I couldn't say.

Q. Well, you mean this sheet would not show whether they were cashed over the counter or not? A. They would not, they would not.

Q. No, but you said that there were other checks cashed over the counter, that they were not all of them, is that correct? A. There may have been, I don't recall.

Q. Well, then, you want to change your testimony from the statement that there was, to the fact, to the statement, that there may have been? A. There may have been, yes, sir.

Q. All right, then, put it this way, that as far as you know there may have been more checks cashed over the counter than those that were produced? A. That is right.

Q. So that you don't know how many checks were cashed over the counter during that period of time by Belle Fox on the Parkwood Account, or in how many of them thousand dollar bills were paid to her, do you? A. I would through
4829 my window, but through the other tellers I would not, no, sir.

Q. Well, let's say through your window, do you know whether that constitutes all the checks that were cashed through your window? A. I do not, no, sir.

Q. No. Have you the deposit slips accompanying this account from the time it was opened until the end of the year of '36? A. I have.

Q. Will you let me see them, please?

(The witness produced deposit slips.)

Mr. Gray: Will our Honor indulge me?

The Court: Oh, certainly.

4830 Mr. Gray: Because this is the first time we have had an opportunity to see these.

The Court: Off the record, Mr. Gray,——

(Discussion off the record.)

By Mr. Gray:

Q. You have handed me some deposit slips. I ask you, where it shows there were checks deposited, and the word "Guar."—evidently an abbreviation for the word "Guarantee" appears—is that the Guaranty in New York, or the Guarantee in Atlantic City? A. That would designate the

Guarantee in Atlantic City. I believe if it would mean the Guaranty in New York it would have the initials N. Y. beneath it.

Q. Then when it is Guar. it is a check drawn on your main office, is it? A. Either main office or us; Guaranty would take in either branch, either bank.

Q. As an illustration—and I haven't disturbed the order of these as you have given them to me, and will not—I show you——

Mr. Gray: Would you like me to show you these first, as I question on each one? 4832

Mr. Gahagan: Well, I have never seen them, Mr. Gray, and I would like an opportunity to see them.

Mr. Gray: I will give them all to you afterwards or——

Mr. Gahagan: Any way you want to do it.

Mr. Gray: —or one at a time.

The Court: You may have full opportunity to do it.

Mr. Gahagan: Yes, sir.

By Mr. Gray:

Q. This is just an illustration. I show you a deposit slip of May 2nd, 1936, indicating a deposit of a check of fifteen thousand dollars, with the word "Guar." there. Does that mean that there was a check for fifteen thousand dollars drawn on your own institution? A. It does. 4833

Q. Well, then, were the accounts at your main office down there, also? A. Yes, the banking—the bookkeeping is all done at the Marine Branch of the Guarantee Trust Company.

Q. Well, now, let's get this clear, because I don't want any—I don't want to misunderstand it or have the jury or anybody else misunderstand it. You mean that when they

deposited that fifteen thousand dollar check it was a fifteen thousand dollar check drawn on the Guarantee Trust Company of Atlantic City? A. That is right.

Q. Your own institution? A. Our own institution.

Q. But deposited in your branch? A. Deposited in our branch.

Q. And do you know, for instance, because there are quite a few of such checks, do you know on what account in the Guarantee Trust Company they were drawn? A. I do not, sir.

Q. Well, were they drawn on the Parkwood? A. I
4835 couldn't say. It doesn't designate on the slip, Mr. Gray.

Q. Then do you know of your own knowledge what corporations or firms where the accounts required the signature of either Eva Fox or Belle Fox were in the Guarantee Trust Company, your main branch? A. They would have been in our bank, too, because the signatures are duplicated. In other words, if an account is opened in the Guarantee Trust Company, our main office, there are three—there are four signature cards required, one for the branch and two for the bookkeeper.

Q. Was this Parkwood Corporation then—did this Parkwood Corporation have accounts in each one of your
4836 other branches? A. It would necessarily have been the same bank. The bank is not run in two separate banks, the branch and the main office are the same, and they could deposit at either one.

Q. All right. A. Either the main office or the branch.

Q. Well, then, this fifteen thousand dollars, which I am using as an illustration on May 2nd, 1936, means a deposit in your branch of a check. Let's start with that. A. Yes.

Q. And inasmuch as it is marked as it is, Guar., it is a deposit of a check drawn on your own bank? A. That is right.

Q. Was it a check drawn and signed by either Eva or Belle Fox, do you know? A. That I couldn't say, sir.

Q. And was it drawn on the funds of the Parkwood Corporation? A. That I couldn't say, sir.

Q. Well, now, if you tell us that all of the accounts—I will withdraw that, because I don't want to—I would rather put it in a question form—you have produced for us today the records of all the accounts in which Eva Fox and Belle Fox were required to make signatures in your branch? A. In our bank, yes, sir.

Q. Yes. Well, does that mean in all—— A. It means——

Q. —of your institutions? A. It means in the Guarantee Trust Company, Atlantic City. 4838

Q. Yes. Therefore, this fifteen thousand dollar check that I am using as an illustration of your method must have been drawn on one of those accounts? A. Not necessarily. It could have been—anyone could have given her that money.

Q. I see, I think you are correct. In other words, if I had had an account in the Guarantee Trust Company I could have given her a check for fifteen thousand dollars and this deposit slip would show just as it is if she deposited my check. A. That is right.

Q. That is correct. 4839

By the Court:

Q. That is to say, the deposit slip shows the amount of the deposit and the bank on which a check is drawn? A. That is right.

Q. No matter who made the check? A. That is right.

By Mr. Gray:

Q. Now, then, there is, as I say, quite a number, I won't bother going into the proportion of them, that are so marked. Now, calling on your personal recollection, can you tell us

4840 whether or not those checks—or, on what account in your bank those checks were drawn?

Mr. Gahagan: I object to the form of the question. Mr. Gray said there are a number of them so marked. Now, that is testifying from records not in evidence. If he wishes to put those checks in, the Government has no objection.

The Court: Yes.

Mr. Gahagan: In the form it is bad, sir.

Mr. Gray: Well, I thought without counting them——

4841

The Court: Well, I am going to save the time by letting him ask the question and assume you are right——

Mr. Gray: Thank you, sir.

The Court: —in what you assume in the question.

By Mr. Gray:

Q. There is a proportion of them, I don't know the exact proportion, what I want to find out is whether you recall from memory the account on which large checks were drawn and deposited in this account. A. No, I do not.

4842

Mr. Gahagan: Your Honor, may I have that last question and answer read, sir? I am sorry.

The Court: Of course you may.

Mr. Gahagan: May I have that read, sir?

The Court: And you see, Mr. Gahagan, all I am doing is trying to save time, without prejudicing the rights of the Government or of the defendants.

Mr. Gahagan: Yes, Your Honor.

(The testimony was repeated by the reporter as follows:

"Q. There is a proportion of them, I don't know the exact proportion, what I want to find out is whether you recall from memory the account on which large checks were drawn and deposited in this account. A. No, I do not.")

By Mr. Gray:

Q. Well, now, for instance, I show you one dated March 16th, with which this account was opened, evidently. That is marked Guarantee, thirty-eight hundred, but it is marked underneath, All Continent Corporation. That would indicate it was a check of All Continent Corporation, wouldn't it, or on the All Continent Corporation account? A. Yes, sir. 4844

Q. Then All Continent Corporation had an account with your bank? A. Yes, sir.

By the Court:

Q. That was the deposit that opened the account? A That was the one that opened the account.

Q. Yes. A. Yes, sir.

By Mr. Gray: 4845

Q. Then I show you one under date of March 31 for sixty-five hundred dollars, with Guar. underneath. That indicates that that is a check on your bank. That is as far as you can go, isn't it? A. That is right, on our bank.

Q. And I show you one of fifteen thousand dollars that we talked about. That indicates that that was on your bank, doesn't it? A. That is right.

Mr. Gahagan: I wish Mr. Gray would specify whether it was check or cash, because I believe that is the direction of the whole line——

Mr. Gray: I have said "check", I have used the word "check" all the way through, haven't I? I believe I have, sir. I shouldn't ask Your Honor.

The Court: Well, if you don't ask me any harder question than that, and it is not a precedent, the answer is yes.

Mr. Gray: Thank you, sir.

The Court: Now, go right straight along.

By Mr. Gray:

4847 Q. I show you then another deposit slip, of May 5, 1936, with a check of ten thousand dollars. The word Guar. indicates that was drawn on your account, doesn't it? A. That indicates a check drawn on our bank.

Q. Where Guar., N. Y. C. appears, that is New York City, isn't it?

(A slip was shown to the witness.)

A. Yes, sir, Guaranty Trust, New York City.

By Mr. Gray:

4848 Q. That is not your institution? A. Guaranty, I believe that would be, not Guarantee.

Q. All right, and the one of June 25, 1936, a deposit of a check of twenty-five thousand dollars, that is drawn on your institution, isn't it? A. That is a check drawn on our institution, yes, sir.

Q. Then the one of August 5, 1936, a check of $1,315.92, that is drawn on your institution, isn't it? A. That is also a check drawn on our institution.

Q. And the one of August 29, '36, of $850 is a check drawn on your institution, isn't it? A. That is also a check drawn on our institution.

Q. And the one of September 3, '36, where there is a check of twenty-seven hundred dollars, is a check drawn on your institution, is that right? A. That also is a check drawn on our institution.

Q. In other words, those that I have spoken of in the last few questions, are checks drawn on some account in your institution and deposited in the Parkwood Corporation's account? A. That is right.

Q. But showing you a deposit slip of September 28, 1936, with two checks, one of $3400 and one of $650, that indicates that they were drawn on your institution, does it not? A. That does. Both these checks were drawn on our institution. 4850

Q. And then I show you a check of October 6th with a deposit of a check of $13,500. That shows it was drawn on your institution, too, doesn't it? A. It does. That was a check on our institution.

Q. Yet you cannot recall on what account these checks were, can you? A. No, sir.

Q. October 13, 1936,—I show you a deposit slip for $42,600, in a check or checks—it indicates one item—that shows it was a check on your institution, does it not? A. Yes, sir; that was a check on our institution.

Q. Now, that is a big one—can you remember that? 4851
A. No, I cannot, sir.

Q. All right; then there is one on November 14, 1936, for $3,000—appears as a check—is that on your institution? A. Yes, sir; that also is a check drawn on our institution.

Q. And I show you one under date of November 30, 1936, for $3,000—a check. That was drawn on your institution, wasn't it? A. Yes, sir; that also is a check drawn on our institution.

Q. And then I will show you one of December 15, 1936, for $3,000—that represents a check drawn on your institu-

tion, doesn't it? A., Yes, sir; that is right; that is a check drawn on our institution.

Q. Now, I show you one that is a little different from any of the rest of them—12th month, 31st, '36, and I will ask you to read the slip and tell me what it shows.

Mr. Gahagan: What is that date, sir?

Mr. Gray: I think December 31, 1936, the last day of the year.

The Witness: Deposited by the Parkwood Corporation, December 31, 1936, Guarantee Trust Company,
4853 Atlantic City, $1500, mail.

By Mr. Gray:

Q. Now, does that mean the same as the others mean, or does it mean anything different? A. That means that this item was received by mail for credit to the Parkwood account.

Q. But it is a check drawn on your institution and may be anybody's check, as you have said to the others? A. That is right.

Q. Now, in this first group of deposit slips which you have given me from March 16, 1936, to September 3, 1936,
4854 there are some cash items deposited—some of them a thousand dollars, or possibly some over. A. I do not know.

Q. Can you tell me whether any thousand-dollar bills were deposited? A. No, sir, I cannot.

Q. And could it be that even where the item of cash appears—that is, the amount of the deposit appears—I should not say "the item of cash"—opposite the word "checks", that still might have been cash?

Mr. Gahagan: "Could it be?" I object to the words "could be". I think I would like to look at those deposit tickets at this point, which I have never seen, to

determine what the deposit tickets actually show. May I do that, sir?

The Court: You may.

Mr. Gahagan: Which ones are cash?

Mr. Gray: There are some of them as you go through there, of cash. I handed him the group.

The Court: Sit right down and take all the time you want—whatever reputation I may ever have had for expeditious conduct of a trial to the contrary notwithstanding.

Mr. Gahagan: Your Honor, I object to the question now, "could it be," because the deposit tickets on the face show—— 4856

Mr. Gray: Wait. I object to your making any statement of facts. I intend to ask the witness what they show in a minute.

The Court: Let the question be read to me.

Mr. Gahagan: I have not finished the question.

The Court: You are not asking a question. I want the question that Mr. Gray put, if there was one.

(Question read by reporter as follows:

"Q. And could it be that even where the item of cash appears—that is, the amount of the deposit appears—I should not say "the item of cash"—opposite the word "checks", that still might have been cash.") 4857

The Court: You like that question pretty well, Mr. Gray?

Mr. Gray: I would like it in this instance.

The Court: Don't you think you can frame it a little better?

Mr. Gray: I will try to, sir.

4858 *Earl E. Scigvell—For Amici Curiae—Cross*

By Mr. Gray:

Q. Does the fact that the amount of deposit appears opposite the printed word "checks" to your mind, in connection with the way your business was conducted—definitely establish to your mind that they were checks? A. Mr. Gray, if I could see the slip I possibly could explain to you.

Q. I would be very glad to let you see the slip, of course. All I am trying to find out——

Mr. Gahagan: I object to what he is going to find out.

4859

Mr. Gray: All right; pardon me, I am just trying to get the facts.

Mr. Gahagan: I am trying to get the facts, and I believe the deposit slips were the best evidence. They indicate what the deposit slips were, Your Honor. That is the only line I am objecting to. It is right on the face of them.

Mr. Gray: I will withdraw that and reframe my question.

By Mr. Gray:

Q. Were those deposits all made at your window? A. That I couldn't say, sir.

4860

Q. Is there anything on the deposit slips to show? A. No, there is not.

Q. These deposits could have been made at any window in the Guarantee Bank? A. Or the Guarantee Trust Company.

Q. Is that also true with respect to the withdrawals that were represented by the checks that were shown you here on Wednesday? A. The checks that were shown me on Wednesday, I believe, bore my teller's stamp, that I alone cashed myself.

Mr. Gray: May I have those checks, please, sir?

May I suggest, if Your Honor please, that these exhibits be left with the clerk after they have been offered in evidence?

Mr. Gahagan: They have been left with the clerk overnight, Your Honor.

Mr. Gray: Well, not only overnight but at all times.

By Mr. Gray:

Q. I just hand you the first check, at random,—I want 4862
to find out what you mean by your teller's stamp or mark. A. This stamp appearing on the face of the check, bearing my initials and the date.

Q. The large circular stamp appearing in the middle of the check? A. That is right.

Q. That indicates they were cashed at your window? A. That indicates that I cashed the check.

Q. Whether there were any other checks that were cashed during the period of time from May 2, 1936, to June 29, 1936; that is covered by these checks, at any of the other windows, you do not know, do you? A. I do not know; no, sir.

Q. All right; but if they were so cashed, they would ap- 4863
pear upon this ledger sheet somewhere, wouldn't they? A. Checks that were paid against that account would appear on that ledger sheet.

Q. Yes; and the ledger sheet would not help you to determine whether they were cashed over the counter or came through by clearance from another bank? A. That is right; they would not determine that.

Q. On your ledger sheet I see a check charged against this account on May 11, 1936, of $1500; is that correct? A. It is.

Q. Have you any knowledge whether you paid out that check? A. I have not.

Q. Then, of course, it follows that you have no knowledge as to—if it was paid over the counter—of the denominations of the money that was paid? A. That is right.

Q. I am only touching the larger figures, showing you again your ledger sheet under date of May 21, 1936,—there was $2,000—a check for $2,000—charged against this account, wasn't there? A. Yes, sir.

Q. That means that there must have been a check signed by the authorized person that came through that account on which you paid out money? A. That is right.

Q. But you do not know whether you paid it out over the
4865 counter or not? A. That shows that the check was charged against the account; it does not show whether it was paid through the account or the Clearing House.

Q. No; and that check would have gone back to the person who controlled the account, wouldn't it? A. It would have been returned in the regular course of business, in the regular monthly statement.

Q. Regular course of business? A. Yes, sir.

Q. On May 28th there was drawn against this account and charged against it three checks—one for $3,000, one for $2,500, one for $2,000—is that not correct, as it appears by your ledger sheets? A. May 28th, Mr. Gray?

Q. Yes. A. $3,000, $2,500 and $2,000 on May 28th; that
4866 is correct.

Q. Now, you cannot tell whether they were cashed over the counter either, can you? A. I believe there is a notation here—it shows the notation alongside of May 28th for the $2,000 check, also the one for $2,500 check, showing it had been certified.

Q. Yes; in other words, showing that that check must have been presented to you for certification. A. Not necessarily to me, Mr. Gray.

Q. I do not mean to you—I am sorry—I mean to your institution. A. That is right.

Q. And do you remember whether it was presented to you for certification? A. I do not.

Q. And those checks would be back in the hands of Eva Fox, wouldn't they? A. Yes, I believe they would; yes, sir.

By the Court:

Q. A check that you certified—would you return that to the customer? A. They would on presentation of the certification slip. If they endorsed—signed—that certification slip at the bank, the original check would be returned to the customer.

4868

By Mr. Gray:

Q. Well; what would happen would be this—in detail—the check would be presented to you; it would be certified by you—and by you, I mean your institution; I am not talking about you personally—and then ultimately it would reach your bank. It would be then credited to the depositor and it would then ultimately, no matter what you did with it, reach your bank? A. That is right.

Q. But it would, of course, be charged against her account the moment you certified it? A. That is right.

Q. And when it reached your bank it would go in with 4869
the rest of the checks that would be altimately—or that may have come in during that month or period of statement, and then ultimately mailed back with the other checks? A. No, it would go into the certified checks at the general ledger bookkeeper, but the slip which originally certified the check would be charged against the account, not the original check that was certified.

Q. Well, would you return to the person who had it certified, finally, the original check or just the slip? A. If they called at the bank for the original check, then the original check would be returned with that slip, but if not, the white

4870 *Earl E. Seiwell—For Amici Curiae—Cross*

slip which been certified on would be returned with the statement.

The Court: That is why I asked the question.

By Mr. Gray:

Q. But if they requested the check you would have given it to them? A. That is right.

Q. Now, there is a check under date of June 4, 1936, for $3,000 appearing on your ledger, is there not? A. There is.

Q. And there is also a check on that same date for a
4871 larger amount, isn't there? A. There is.

Q. How much? A. $12,500.

Q. $12,500, and you cannot tell us whether that was paid out over the counter or whether it was in thousand-dollar bills, can you? A. I cannot.

Q. Now, Mr. Seiwell, you had a certain recollection, or a recollection to a certain extent about these other checks that were shown to you. Don't you remember these checks at all?

Mr. Gahagan: I object to the form of the question.

The Court: That question is excluded upon objection.

4872

By Mr. Gray:

Q. Do you remember cashing any other checks except these that have been produced here and are marked, I think, Exhibits 31 to 41 (Amici Exhibits 177 to 187)? A. Do I remember cashing other checks?

Q. Yes. A. No, I do not.

Q. You will not say, though, that these are the only checks you ever cashed over the counter for—— A. Belle Fox?

Q. Belle Fox or Eva Fox? A. Will you repeat that again, please?

Q. You will not say, however, that the checks marked Exhibits 31 to 41 (Amici Exhibits 177 to 187) are the only checks you have cashed over the counter for Eva or Belle Fox? A. I will not.

Q. No; they are the only ones that have been produced and shown to you, is that right? A. That is right.

Q. Continuing to speak from the ledger account of the Parkwood Corporation, on July 18, 1936, $3,600 was charged to this account, was it not? A. It was.

Q. Which means that a check was presented for that amount? A. That is right.

4874

Q. What is the next item appearing on that entry sheet? A. July 20, 1936.

Q. What is that amount? A. $22,950.

Q. Which means that you cashed a check for that amount in some way and charged it to that account, is that correct? A. That means there was a check charged against the account for that amount.

Q. Well, that is what I mean. I accept your correction.

Mr. Gahagan: If Your Honor please, that is not what Mr. Gray said, that——

Mr. Gray: I said that is what I mean. I accepted the correction from the witness.

4875

Mr. Gahagan: I want to be clear, sir.

The Court: So do I. The answer will stand.

By Mr. Gray:

Q. As a matter of fact, on July 21 and on July 22, each, there were checks for $2,000 charged against that account, weren't they? I am speaking of 1936. A. July 21 and July 22?

Q. Yes. A. That is right.

Q. And on July 23 was there a check of $1,000 charged against that account? A. Yes, sir.

Q. And also on July 23 there was a check of $1,500 charged against that account, wasn't there? A. Yes, sir.

Q. Continuing with the same account, on August 6, 1936, there were two checks, each one being for $3,000, charged against that account, wasn't there? A. That's right.

Q. And on August 15, 1936, there were two checks charged against that account, one for $4,000 and one for $3,000, is that correct? A. That is correct.

Q. And on August 27 there was a check for $3,000 charged against that account, was there not? A. There was.

4877 Q. And on August 31, a check for $1,000; I am speaking of those figures which are just even money. That is even money, isn't it? A. That is right, yes, sir.

Q. And on September 3, one for $3,000, is that right? A. On September 3, 1936, $3,000, that is right.

Q. Is that Parkwood Corporation account still with your institution? A. I believe there is a balance left in our institution in that account.

Q. Is it an active account now? A. I couldn't say, sir.

Q. You are still a teller there? A. Yes, sir.

Mr. Gray: Will Your Honor indulge me a moment?

The Court: Yes, indeed.

4878 *By Mr. Gray:*

Q. Now, I said I was going to ask you about the cash items of these slips; I wish to ask you about them now. I don't know whether they have been gotten out of order or not. I show you the deposit slip of July 14, 1936. Can you tell by that slip whether there were any checks, or what it was that was deposited? A. That was a deposit of cash.

Q. And how much was it? A. $900 in ones and twos, and $3,100 in specie.

Q. And by specie, do you mean coins? A. Coins, yes, sir.

Q. $3,100 in coins? A. Yes, sir, according to the slip.

Q. The largest coin that the United States mints and was in circulation in 1936 was what? A. One silver dollar.

Q. So that must have been $3,100 in either dollars, half-dollars, quarters, dimes, nickels and pennies? When I say either, I don't mean that deposit must be all of one denomination; it must have had some or all of those denominations? A. It could have consisted of all denominations.

Q. It could have consisted of all or of one denomination? A. Yes, sir.

Q. I show you the slip of June 27, 1936. What was that deposit? Of what did it consist, I mean? A. $4,000 in ones and twos. 4880

Q. I show you the slip of July 19, 1936. Of what did that consist? A. $1,000 in ones and twos.

Q. And the slip of April 27, 1936, and ask you of what did that consist? A. $800 in ones and twos; $176.02 specie.

Q. By specie, you mean the same as you did with respect to the other one? A. That is right.

Q. I show you the slip of March 23, 1936, showing a deposit of $2,500. Of what did that consist? A. Bank notes, large.

Mr. Gahagan: What was that date, sir?

Mr. Gray: "Bank notes, large."

Mr. Gahagan: The date is what I am interested in. 4881

Mr. Gray: He will have to tell you that.

The Witness: March 23, 1936.

By Mr. Gray:

Q. You don't know the size of those notes? A. It could have been from $5 on up, sir.

Q. What does the M stamped on that deposit slip mean? A. I believe that means that it was taken in at our branch, Marine Branch.

Q. And the slip of September 18, 1936; of what did that deposit consist? A. $500 in ones and twos, and $500 in specie.

Q. Which means small coins? A. Coins of one silver dollar and less.

Q. In other words, that means an even $500 in small money? A. According to the slip, yes, sir.

Q. You don't make out these slips, do you? A. No, sir.

Q. They are made out when they come to the window of the teller to whom the deposit is presented, is that right? A. That's right.

Q. So there will be no misunderstanding, there, of course, appears upon this ledger sheet a number of other items of deposits and a number of other items of checks drawn about
4883 which I have not asked you; that is correct, isn't it? A. That is true.

Q. You said you had an account of All Continent Corporation? A. Yes, sir.

The Court: Of what?

Mr. Gray: All Continent Corporation.

By Mr. Gray:

Q. I will return to you these deposit slips, Mr. Seiwell, and your sheets so that you will not get them confused with any others. A. Are you finished with these, Mr. Gray?

4884 Q. For the present, at any rate, unless there is something further develops in your cross-examination. I want to see the records of the All Continent Corporation.

The Court: Take your time in putting them away.

The Witness: Thank you.

Mr. Gahagan: It may be necessary to have those very ledger sheets in the cross-examination or examination of some further witness, Your Honor, and I would like to have those, and direct the witness to leave the particular ledger sheets here.

Mr. Gray: I have no objection.

Mr. Gahagan: So that we will have the records available at any time.

The Court: That may be done.

(Records were produced by the witness and shown to Mr. Gray.)

Mr. Gray: Will Your Honor indulge us a moment until we examine these?

The Court: Certainly.

Mr. Gahagan: Your Honor, to safe time at some future moment, would it be all right if this witness goes through those deposit tickets that he has just looked at and picks out every one which indicates a deposit of cash, while Mr. Gray is looking over the 4886
record, sir? It would just save time.

The Court: Do you mean your are going to ask some question about it later?

Mr. Gahagan: Yes, sir, I would like to ask some question about it.

The Court: He may thus occupy himself, if he wants to.

Mr. Gray: They are all right together.

Mr. Gahagan: I would lik to be sure there aren't any others in there, so that we may have a complete picture on the cash.

The Court: He may thus occupy himself, if he wants to. 4887

By Mr. Gray:

Q. You have handed me, Mr. Seiwell, certain ledger sheets showing the account of the All Continent Corporation with the Marine Atlantic Safe Branch; that is your full title, I guess, isn't it? A. That is right.

Q. Of the Guarantee Trust Company in Atlantic City, dating from January 6, 1936, down to and including January 11, 1938, and also certain deposit slips. I take the date of February 13, 1936, and the balance in the account on that

date was a little over $60,000, wasn't it? A. February 13, 1936?

Q. Yes. A. Yes, sir.

Q. All right. Now, as against that account on February 14, 1936, there were drawn and charged two checks, one of $13,000, and one of $10,000, was there not? A. February 14, 1936, one of $13,000 and one of $10,000, yes, sir.

Q. Do you know whether they were deposited in any other account in your institution? A. I do not, sir.

Q. And on February 19th there was a check charged against this account for $20,500, was there not? A. Feb-
4889 ruary 19, 1936, $20,500, yes, sir.

Q. And on February 29, there are three even money checks, one for $2,500, one for $4400, and one for $5000 charged against this account, are there not? A. Three checks, yes, sir, $2500, $5000 and $1400, yes, sir.

Q. Do you know whether any of those went into any of the other accounts in which the Fox family were required to sign to withdraw from? A. I do not, sir.

Q. And on March 16, 1936, there was a check charged against this account for $3800, and on March 31, one for $6500, is that right? A. March 16, 1936, $3800, and on March 31, 1936, $6500, yes, sir.

4890 Q. And on the same day that there was a check drawn against that account and charged against it, for $6500, there was a deposit for $6500 made, was there not? A. Yes, sir.

Q. And you have handed me two deposit slips. I show you a paper and I take from it an item marked a credit to the All Continent Corporation, which indicates that that deposit was a transfer of funds from a Los Angeles bank of $6500, is that correct? A. This credit memo indicates that there was a transfer of funds from the Los Angeles bank for $6500, yes, sir.

Q. Which is that deposit as of that day? A. That is right, sir.

Q. And your ledger sheet would indicate to you that that $6500 was immediately drawn out? A. Yes, sir.

Q. Looking at this ledger sheet and turning from one side to the other, the last entry on one side is March 31, 1936, and the first one on the next, May 2, 1936; would that indicate that there were no deposits made and no checks drawn that were charged against that account in April of 1936? A. To me, that would indicate that there was no action between March 31, 1936, and May 2, 1936.

Q. By no action, you mean no deposits made and no checks charged against the account? A. That is correct.

4892

Q. Now, on May 2, 1936, there appears a deposit of $15,000 and also a withdrawal of $15,000; is that not correct? A. Yes, sir.

Q. And, of course, your credit memoranda included in the deposit slips, that deposit is on account of a wire from the Chase National Bank in New York, isn't it? A. Yes, sir.

Q. And those papers together would indicate to you that $15,000 was deposited that day and then immediately withdrawn? A. Yes, sir.

Q. And on May 5th, 1936, there is a deposit of ten thousand dollars and also a withdrawal of ten thousand dollars on the same date, is there not? A. Yes, sir, there is. 4893

Q. And this deposit slip that I show you would seem to indicate that on May 5th there was deposited in this account—wait until I see what we call it—well, it will show that there was transferred from Los Angeles to your bank the sum of ten thousand dollars. A. Transfer of funds from Los Angeles, California, to National City Bank, New York City, ten thousand dollars, yes, sir.

Q. And those, all those papers would indicate to you that it was deposited that day and immediately drawn out? A. Drawn out that day, yes, sir.

Mr. Gahagan: May I look at the one that says it is drawn out? I wanted to see whether it indicates whether it is a check, or drawn out in cash.

Mr. Gray: Well, we will ask him the question.

The Court: You may look at the paper if you desire.

Mr. Gahagan: I just wanted to look at it and see whether there is anything on it that indicates whether it was drawn out in a check or drawn out in cash, sir.

4895 (The paper was shown to Mr. Gahagan.)

By Mr. Gray:

Q. Of course, these sheets do not show whether it was drawn in cash over the counter or whether it was a check, does it? A. It does not, no, sir.

Q. No, the same as the other sheets. You already testified to that today while you were here on the witness stand? A. That is right.

Q. And you have not testified that it was otherwise, have you? A. No, sir.

Q. And that check for ten thousand dollars may have
4896 been either paid to somebody in cash over the counter or may have been deposited in any account whatsoever that the payee of that check may have had anywhere, is that correct? A. That is right, sir.

Q. And it would eventually go back to the person who was authorized to handle and to sign checks for the All Continent Corporation? A. It would be returned in their statement.

Q. Yes. A. At the end of the month, yes, sir.

Q. And whose signature card did you have for the All Continent Corporation? A. Eva Fox, president.

Q. Yes. On June 25th——

The Court: Mr. Gray.

Mr. Gray: Pardon me, sir.

The Court: I am wondering whether you are likely to be somewhat longer. If you are, I shall take the morning recess at this time.

Mr. Gray: Though I didn't think I would be, I am afraid now, sir, that I will be.

The Court: How much longer do you think you will be?

Mr. Gray: You see, I haven't seen these, I can't answer Your Honor directly because I haven't seen 4898
these other accounts. Whatever they may develop that I think is of importance to case, sir, I shall have to ask him about, but I will ask him no unnecessary questions.

The Court: We will take our morning recess for fifteen minutes.

(Recess at 11:10 o'clock A. M.)

EARL E. SEIWELL, resumed.

Cross Examination by Mr. Gray (Continued):

Q. Continuing now, these questions are with respect to 4899
the All Continent Corporation, about which I was asking you immediately before recess. I do not know whether I covered this item, but on June 25, 1936, there was a deposit of twenty-five thousand dollars and a withdrawal of twenty-five thousand dollars in that account, was there not?

(The account was shown to the witness.)

A. June 25, 1936?

By Mr. Gray:

Q. Yes. A. Yes, sir.

Q. And on July 18, 1936, there was a deposit of twenty thousand dollars, was there not? A. Yes, sir, there was.

Q. What does that C. M. alongside of that mean? A. Credit memo.

Q. In other words, that—as a matter of fact, I show you, the credit memo was a wire from the Chase National Bank of New York for twenty thousand dollars, is that right? A. Yes, sir, that is right.

Q. What is the next deposit after this one that we have just been discussing? A. July 20.

Q. The amount of it, please? A. 1936; $27,803.33.

4901

Q. On July 22, 1936, there was a check drawn against this account for $42,305.74, was there not? A. July 22, 1936, there was a check for $42,305.74, yes, sir.

Q. On September 2nd, 1936, there was a deposit of twenty-seven hundred dollars and a withdrawal of twenty-seven hundred dollars on the same date, wasn't there? A. Yes, sir, there was.

Q. On October 6th, 1936, there was a deposit of $13,586.58 and a withdrawal of $13,500, was there not? A. October 6th, there was a deposit of $13,586.58, and a withdrawal of $13,500; yes, sir.

Q. On October 8th there was a deposit of forty-two

4902 thousand dollars, and on October 13th there was a check drawn against the account for forty-two thousand dollars, is that correct?

The Court: I suppose you mean such a check was cashed on that date, not that it was drawn on that date?

Mr. Gray: Well; it was charged to the account on that date.

The Court: Yes.

Mr. Gahagan: That is just the point that I am making, Your Honor that it is not a withdrawal, it is just an item that may either be a check, that

clears through the account, and it is not a check, necessarily, cash, from that sheet that he is looking at.

Mr. Gray: I have never even suggested so, sir. In fact, I have proved the contrary by the witness.

The Court: Please put your next question.

Mr. Gray: Yes, sir.

By Mr. Gray:

Q. Answer that one. A. On October 8th, 1936, there was a deposit of forty-two thousand dollars, and a withdrawal of forty-two thousand dollars on October 13, 1936. 4904

Q. Now, do you know anything about the nature of that deposit from that ledger sheet that you have? A. No, sir, I do not.

Q. I show you a deposit slip, forty-two thousand dollars, and down below, in red pencil, eighty-four thousand dollars. Is that that deposit? A. Yes, sir, that is that deposit.

Q. And looking at your sheet, your ledger sheet, and also at that deposit slip, can you tell me whether that had to go through any special course before it could be drawn against? A. The deposit slip shows that it was an item drawn on New York City.

Q. What is the eighty-four thousand dollars? A. Therefore——. 4905

Q. What does the eighty-four thousand dollars mean there? A. Therefore it was uncollected for one day.

Q. Uncollected for one day? A. Yes, sir.

Q. In other words, unless there was a balance outside of that, that item could not have been drawn against until you collected it? A. That is true.

Q. And when that was deposited on October 8th what was the balance in this account? A. $3,020.58.

Q. All right. Now, there is a deposit of five thousand dollars on October 16th and a withdrawal of five thousand

4906 *Earl E. Seiwell—For Amici Curiae—Cross*

dollars, as appears by this ledger sheet, on October 19, '36. Is that correct? A. Yes, sir, that is correct.

Q. I show you the deposit slip for that deposit on October 16. Does that tell you on what account that five thousand dollar check that was deposited was drawn? A. It does.

Q. On what account? A. Parkwood.

Q. Parkwood. In other words, in this instance they drew a check for five thousand dollars against their account in your bank, in Parkwood, and put it in All Continent?

4907 A. Yes, sir.

Q. And three days later a check was drawn against it for five thousand dollars? A. That is true, sir.

Q. On October 20th there was a deposit, was there not, of forty-two thousand, eight hundred dollars, and on the same day a check charged against this account, a certified check, for $42,828.80? A. Yes, sir, there was a deposit of $42,800, and a certified check drawn against it for $42,828.80.

Q. And I show you the deposit slip for the $42,800. Does that tell you on what institution that check was drawn? A. That was drawn on our own bank, sir.

Q. On our own bank? A. On our own institution.

Q. But it does not tell you what account it was drawn

4908 against? A. No, sir.

Q. Do you know? A. No, I do not, sir.

Q. You have produced today all of the accounts, have you,—— A. Yes.

Q. —that Eva Fox or Belle Fox had to sign for? A. I have, sir.

Q. All right. It should be in one of those, then, shouldn't it? A. It could be in any account, sir.

Q. In other words, it could be—I see, I get what you mean, I think you are correct—in other words, it could be anybody's check, on any account in—— A. Our institution.

Q. In your institution. A. That is true, sir.

Mr. Gray: Your Honor indulge me a moment, if you please, sir?

The Court: Yes.

By Mr. Gray:

Q. I hand you the ledger sheets of the account of the All Continent Corporation. When was it opened? A. January 3, 1936.

Q. Well, that is the first date that appears there, isn't it? A. Yes, sir.

Q. As a matter of fact, from your deposit slips—not that 4910
it makes very much difference—there was a deposit made on December 28th, but it may be that your account was not opened actually on your books until January 3rd. A. It wasn't opened in our bank until January 3, 1936.

Q. And that deposit slip is in error? A. I would say that it is, sir.

Mr. Gray: All right.

Mr. Gahagan: May I look at that, Mr. Gray.

By Mr. Gray:

Q. I show you deposit slip dated July 23, 1936, with two 4911
items on it, of checks on the Guarantee, fifteen hundred, and two hundred and fifty; but what I want to know is what that little memorandum means down at the bottom. A. That to me would indicate that when the block was made up that these checks, when they had been deposited, had been put on the cash side of the block instead of with the deposit slip.

Q. You mean by that they had been wrongly entered in your block? A. The teller in taking this deposit, instead of putting the checks with the deposit slips, had put them into his cash bin, instead of with the deposit slip.

Q. All right.

Mr. Gahagan: May I see that, Mr. Gray?

Mr. Gray: Yes, sir.

(Discussion off the record between counsel.)

Mr. Gahagan: I just wanted to keep these two separate.

Mr. Gray: Keep them yourself if you want, I don't care.

Mr. Gahagan: I just want to keep them separate so I won't waste time finding them.

4913 *By Mr. Gray:*

Q. Now, what other accounts did you have in that bank subject to the signature of Eva Fox or Belle Fox?

The Court: For the benefit of counsel I may say now that no matter how long Mr. Seiwell takes I shall finish his testimony before Mr. Fox resumes the stand.

Mr. Gray: Yes, sir. I will be through before recess, I think, sir. I shall try my best to.

The Court: Oh, I am not hurrying you.

Mr. Gray: I understand, sir.

The Court: But I am telling you that that is what I am going to do.

4914 Mr. Gahagan: All right, sir. I had some redirect, too, Your Honor, at the end.

A. 50 West Third Street—do you want me to answer, Mr. Gray?

By Mr. Gray:

Q. Any of them. A. 50 West Third Street Corporation.

Q. 50 West Third Corporation. Whose signature was required there? A. Eva Fox, president; vice-president, Belle Fox.

Q. And before we start on this, when was the account opened and when was it closed, if it was closed? A. Account was opened April 20, 1936, and it has not been closed, according to this sheet.

Q. I do not wish to ask you any questions about this account. What other accounts have you?

Mr. Gahagan: May I look at those, Mr. Gray.

Mr. Gray: Sure.

A. Consolidated Biological Products, Incorporated.

By Mr. Gray: 4916

Q. You have handed me the ledger sheet of the Consolidated Biological Products, Incorporated. I ask you when that account began, when it was opened. A. May 8, 1936.

Q. And is it still open? A. I couldn't say, sir.

Q. All right. I show you the deposit slips—well, when you say you can't say whether it is open—— A. You said, is it still open?

Q. Who says? A. You did.

Q. I say, is it still open? A. Yes.

Q. You said, "I can't say, sir". A. I can't say, sir.

Q. Well, I direct your attention to the last memorandum; 4917
in the first place, the last memorandum shows a balance of $164.31, doesn't it? A. December 9, 1937, yes, sir.

Q. Well, all right. Then it shows an entry below that, doesn't it? What does that entry mean to you as the teller of the Guarantee Trust Company? A. Balance transferred to Guarantee Bank and Trust Company.

Q. Well, what does that mean? A. It means that it has been transferred to the ledger sheets in the new bank.

Q. Yes, well, in other words, what you mean is that in your branch—— A. Yes, sir.

4918 Q. —on that date in December of '37 you had so much money, and for some reason, which I suppose you don't know, it was transferred——.

Mr. Gahagan: I object to this question right here, sir. I think the form is objectionable.

Mr. Gray: The form is atrocious. I will shift it, just to save time.

Mr. Gahagan: I would like to have it stricken from the record, if Your Honor please.

Mr. Gray: I am willing it should be stricken, if
4919 Your Honor please.

By Mr. Gray:

Q. Do you know why it was transferred? A. Yes.

Q. Why? Then I was wrong? A. I think on May 8th—or May 1st, 1938, I think that was the day that the bank was transferred to the Guarantee Bank and Trust Company, from the Guarantee Trust Company of Atlantic City. It reorganized under a new name.

Q. Your bank? A. Yes, sir.

Q. You are still with them? A. Yes, sir.

Q. There still is a Marine Branch? A. Yes, sir.

Q. And what was the name of your Trust Company be-
4920 fore you think there was a transfer? A. Guarantee Trust Company of Atlantic City.

Q. And what was your branch called? A. Marine Branch, Marine-Atlantic Safe Branch of the Guarantee Trust Company, Atlantic City.

Q. And what is it now? A. Marine-Atlantic Safe Branch of the Guarantee Bank and Trust Company, Atlantic City.

Q. In other words, the name was changed to the Guarantee Bank and Trust Company? A. That is right.

Q. Well, does that mean that you opened up a new ledger sheet for the Guarantee Bank and Trust Company? A. For that account, yes, sir.

Q. Then you have produced only the sheets of the Guarantee Trust Company? A. Yes, sir.

Q. And not those of the Guarantee Bank and Trust Company? A. That is right, sir.

Q. All right.

Mr. Gahagan: I want to have it appear on the record, Your Honor, that all the records that Mr. Gray asked for the other day have been produced.

Mr. Gray: That is correct, I agree it shall appear, but I do object——

Mr. Gahagan: The insinuation is in the question, Your Honor. 4922

The Court: Now, I don't want to hear any more unnecessary remarks from either side.

By Mr. Gray:

Q. What you mean is the account may or may not still be open with the new institution? A. That is true.

Q. Yes, all right. Now, you have the deposit slips in front of you,—— A. I have, sir.

Q. —haven't you?

Q. What was your first deposit? A. May 8, 1936.

Q. May 8, 1936? A. Yes, sir. 4923

Q. And the amount of that deposit is what? A. $6700.

Q. And does it show whether or not the source of that $6700 was your institution? A. I would take this writing on here to mean Guarantee, meaning our institution.

Q. It is a check, however, isn't it? A. Yes, sir, a check.

Q. So that it is a check drawn on some account in your institution by somebody, which was credited in this account? A. That is right.

Q. And you have a deposit on June 11th of $6500, haven't you? A. Yes, sir.

Q. Is that also drawn on funds of your institution? A. It was drawn on a check on the Guarantee Trust Company, yes, sir.

Q. In other words, it is credited to this bank account of the Consolidated Biology Products, Inc. and in your books must have been charged to some other bank account? A. That is right, sir.

Q. And the checks themselves have been returned to the officers of the Consolidated Biology Products, Inc.? A. Yes, sir.

Q. And these officers are whom? Who are those officers? A. Eva Fox, president; Belle Fox, vice-president.

Mr. Gray: I apologize for my grammar.

The Court: You know in Boston we say, "Whom am I?"

Mr. Gray: I did not think around Harvard they did, sir.

By Mr. Gray:

Q. On July 14, 1936,—I might as well give you all these dates—the amounts are the same. On July 14th, August 6th, September 6th, October 3rd, November 16th, December 3rd, in '36—we will stop there—there were deposits of $6600 made on each of those dates, weren't there? A. With the exception of September 6th—it is September 3rd there on the deposit slip.

Q. September 2nd—if I said—I started with either July 14th or August 6th—I will start with July 14th; or August 6th, September 2nd, October 3rd, November 16th, December 3rd—on all of those dates there was 66—on each of those dates there was $6600 deposited, wasn't there? A. Yes, a check of $6600.

Mr. Gahagan: May I look at the slips at this juncture?

Mr. Gray: I am going to ask him about them.
The Court: But we will pause.
Mr. Gahagan: Just one second.

By Mr. Gray:

Q. Each one of these deposits was a check, or checks—or maybe I had better put it in the inquiring way—was each one of these deposits a check or checks? A. Each deposit was a check.

Q. Each deposit was a check drawn on your institution by somebody? A. Yes, sir.

Q. On February 2, 1937, and March 2, 1937, and April 3, 1937, there were also deposits of $6600 on each of those dates, were there not? A. I do not know, sir; I do not have the slips. 4928

Q. Oh, pardon me, you do not have—you only brought them down—— A. For '36; yes, sir.

The Court: That is all you asked him for, isn't it?
Mr. Gray: That is all he was asked to bring.

By Mr. Gray:

Q. But look at the ledger sheet and tell me whether that is so or not. A. Yes, sir; January 4, 1937, $6600 deposit; February 2, 1937, $6600 deposit; March 2, 1937, $6600 deposit; April 3, 1937, a $6600 deposit. 4929

Q. Now, then, will you tell me what other accounts you have produced in which Eva Fox or Belle Fox were the ones who signed the checks that drew against the accounts? A. The Georgetown Holding Company.

By the Court:

Q. Is that the only other one? A. No, sir; there are several more.

4930 *Earl E. Seiwell—For Amici Curiae—Cross*

By Mr. Gray:

Q. Whose signature was required as to that account? A. Eva Fox, president.

Q. And when was it opened? A. April 20, 1936.

Q. Is it still open? A. I couldn't say, Mr. Gray.

Q. All right. A deposit that was made on May 21, 1936, was a check for $2,000 on your bank, wasn't it? A. May 21, 1936, a deposit made on our bank—yes, sir,—check drawn on our bank.

Q. And on June 4, 1936, there was a deposit of $3,000
4931 which was a check on your bank, wasn't it? Isn't that so? A. That is so.

Mr. Gray: That is all I want to ask you about that.

Mr. Gahagan: May I see these, please?

Mr. Gray: Yes, sir. Do you want me to wait, Mr. Gahagan?

Mr. Gahagan: I just want to glance through, that is all, Mr. Gray.

By Mr. Gray:

Q. What other account have you of a similar nature. A.
4932 Namtaw Realty Corporation.

Q. Spell it, please, for the reporter. A. N-a-m-t-a-w Realty Corporation.

Mr. Gray: I do not desire to ask him any questions about this account.

By Mr. Gray:

Q. What other one have you? A. Comedy Amusement Corporation.

Q. And who was required to sign the checks for that, do you know? A. Eva Fox, president.

Q. Who has the right to sign those checks? A. On the Comedy Amusement Corporation?

Q. Yes. A. Eva Fox, president.

Q. Only Eva Fox? A. Eva Fox, president.

Q. Not anybody else? A. No, sir.

Q. Who had the right to sign checks for the Namtaw Corporation? A. Eva Fox, president.

Q. Did you ever see Eva Fox at your bank? A. Not to my knowledge, no, sir.

Q. No. What other accounts have you that had to be signed by either Eva or Belle Fox? A. Transient Garage Corporation. 4934

Q. While you have the ledger sheet in front of you, when was that opened? A. May 20—April 20, 1936.

Q. And is it still open? A. That I couldn't say. According to the sheet, it is.

Mr. Gray: Your Honor will indulge me a moment?

The Court: Certainly.

By Mr. Gray:

Q. Who signed the checks on that account—Transient Garage Corporation? A. President, Eva Fox; vice-president, Belle Fox.

Q. Either one could sign the checks, you mean? A. It does not say on the card, Mr. Gray; it just gives the two signatures on the card. 4935

Q. Well, does that mean usually either one could sign them or that both had to sign them? A. I would take it from this that either one could sign them.

Q. You are a teller there? A. Yes, sir.

Q. Now, if you were at a window and somebody presented you a check, whose signature would you require on that account? A. If I had this card I would find out from the —from the resolution, Mr. Gray.

4936 *Earl E. Scivell—For Amici Curiae—Cross*

Q. Well, at any rate that card would indicate to you one of two things, would it not: either that the signatures of both were required or that either one could sign? A. Yes, sir.

By the Court:

Q. And by the "resolution" do you mean resolution of the corporation authorizing certain persons to sign on the corporation's behalf, its checks? A. That is right.

Q. All right. A copy of that resolution you would natu-
4937 rally have in the bank? A. Yes, sir.

Mr. Gahagan: While we are waiting may I look at the signature cards, your Honor?

The Court: Of course, you may, Mr. Gahagan.

By Mr. Gray:

Q. I want to ask you about one of these deposits—I show you the deposit slip of the Transient Garage Corporation of August 6, 1936, which appears to be a check drawn on your institution for $3,000; is that correct? A That is true; that is right.

Q. You do not know on what account in your institution
4938 that was drawn, do you? A. No, sir.

Q. I show you the sheet—ledger sheet—in this account—if I may be permitted to come around alongside of him, it will save a lot of time.

The Court: All right.

By Mr. Gray:

Q. (Continued) —and it shows that there was drawn against this account and charged against it on May 8, 1936, $6700, doesn't it? A. Yes, sir.

Q. And on June 11, 1936, $6500. A. Yes, sir.

Q. And July 14, 1936, $6600? A. Yes, sir.
Q. And August 6, 1936, $6600——

Mr. Gahagan: I have lost the trend, Mr. Gray. May I have the beginning of the question?

The Court: Will the reporter read the question, please?

(The reporter read as follows:

"Q. And it shows that there was drawn against this account and charged against it on May 8, 1936, $6700, doesn't it? A. Yes, sir.")

4940

Mr. Gahagan: That is all, Mr. Reporter.

By Mr. Gray:

Q. On August 6, 1936, $6600? A. Yes, sir.
Q. September 2, 1936, $6600? A. Yes, sir.
Q. October 3, 1936, $6600? A. Yes, sir.
Q. November 16, 1936, $6600? A. Yes, sir.
Q. December 3, 1936, $6600? A. Yes, sir.
Q. January 4, 1937, $6600? A. Yes, sir.
Q. Now, can you answer me the question as to where all these $6600 deposits that were made in one of those other accounts that we had, and that consisted of checks drawn on an account in your company—whether it was drawn on this account or not? A. I could not say, sir.

4941

Q. All right; you still cannot say. All right.

Mr. Gahagan: I object to the comment on the evidence.

Mr. Gray: That was not a comment, that was a question. I said, "You still cannot say."

The Court: I guess the best thing, Mr. Foreman and gentlemen, would be to keep still under these circumstances and suggest that we go right straight along.

By Mr. Gray:

Q. Now, does that include all the accounts that they have? A. Yes, sir.

Q. Now, all of these accounts were in your institution, in your branch, weren't they? A. In our bank, yes, sir.

Q. And your branch, weren't they? A. Yes, sir.

Q. And you were a teller there during all the time that these accounts were running? A. Yes, sir.

Q. Do you or do you not have the same familiarity with these accounts as you said you had with the account of the
4943 Parkwood Corporation?

Mr. Gahagan: I think the question is argumentative and I object to it.

The Court: Well, I will sustain an objection to the question.

Mr. Gray: I think that is all.

The Court: Now, can you think of some questions to ask, Mr. Gahagan.

Mr. Gahagan: Yes, I have some questions I would like to ask.

Redirect by Mr. Gahagan:

4944 Q. Have we those two deposit tickets that I asked you to keep out here, sir? A. The two accounts?

Q. The two deposit tickets; you remember there were just two Mr. Gray referred to. A. Well, are those the ones (indicating)?

Q. Yes, sir. Now, I refer to deposit ticket of July 23, 1936, on All Continent Corporation, and I believe you were asked whether or not there was not a deposit of $1500 and $250 on that day, sir. A. There was a deposit on that day, yes, sir.

Q. What else does that deposit ticket tell you in addition to the fact there was $1500 and the other amount I mentioned

deposited? Is there anything else that identifies the deposit, sir? A. No, sir.

Q. Well, may I direct your attention to the Guar.? A. That means checks on the Guarantee Trust Company.

Q. On the account that was opened and the deposit ticket which you said might be in error, I draw your attention to those deposits and ask you whether or not they are checks——

Mr. Gray: That is objected to only because he said this witness testified that the deposit slip was in error.

4946

Mr. Gahagan: I said might be in error.

Mr. Gray: He didn't say anything of the kind. In other words, I am objecting to the quoting of the testimony unless it is quoted correctly.

The Court: Well, then, let the jury remember what the testimony was, and let the question be answered.

Mr. Gray: All right. As long as he has stated that, may I say to Your Honor, then, that what he said was the teller in entering it may have made a wrong entry in connection with the block sheet. That is what he said.

The Witness: I don't think so.

By Mr. Gahagan: 4947

Q. The check I have just shown you is a question of the wrong entry on the block sheets, is it not? A. This one of July 23 is the question of the wrong entry.

Q. On the block sheets? A. Yes.

Q. That brings me back to the question I really meant to ask, which was inasmuch as those checks were cleared through your own bank, the Guarantee Trust Company, would it be proper practice in your bank to enter them as cash, immediately having the cash available in the bank? A. I just don't quite understand, Mr. Gahagan.

Q. Would you read this legend to me on the bottom of that check, sir? A. The legend says, "Checks on cash side of block."

Q. Did you make that entry? A. No, sir.

Q. Was that your block sheet that is concerned? A. I don't think so, no, sir.

Q. Now, those checks were checks on the bank, were they not? A. Yes, sir.

Q. And isn't it a fact that immediately the teller might have gotten the cash of those checks without waiting for the checks to clear? A. Yes, sir.

4949 Q. And he could immediately put the cash into his block, is that right, sir? A. Yes, sir.

Q. Now, this other deposit ticket of December 28, 1935, sir referring to the All Continent account, I ask you what dat that account was opened. A. January 3, 1936.

Q. Two days after New Year's, is that right, sir? A. Yes, sir.

Q. Were those cash items or were those check items which were made after the first deposit in that account, sir? A. They were items of checks.

Q. Now, were they checks upon your particular bank, sir? A. No, sir.

4950 Q. They would have to clear, would they not? A. Yes, sir.

Q. And as these deposit tickets are handed to the tellers, the tellers look at them in the usual course of the business of the bank, do they not? A. Yes, sir.

Q. And they check the items on them, do they not sir? A. Yes, sir.

Q. Therefore, in the practice of the bank, wouldn't it be quite possible, sir, to have had the teller wait until these checks cleared until they gave an opening balance to draw upon at your bank, sir? A. The teller doesn't give them an opening balance to draw on, Mr. Gahagan.

Q. What else would show what time the particular account was opened? The resolution, perhaps? A. The resolution or the signature card might have the date on it.

Q. I show you a signature card and ask you whether that has any date on it, sir.

The Court: Is this the account where there was a deposit slip made out by the depositor under date of December 28th?

Mr. Gahagan: The 28th, and then three days later, two days after New Year's——

The Court: What you are doing is examining because of that situation? 4952

Mr. Gahagan: Yes, that is right, sir.

The Court: All right.

The Witness: There is no date on the signature card, sir.

By Mr. Gahagan:

Q. Now, have you the deposit tickets for Georgetown Holding Company? A. Are you finished with All Continent?

Q. No, I wish you would leave those out, if you would, Mr. Seiwell. You keep them, sir. Mr. Seiwell, you took those deposit tickets out of the records of your bank, sir? 4953
A. I did.

Q. Did you have anybody else to help you, sir? A. No, sir.

Q. Did you make a thorough search for all the deposit tickets on that account? A. I made a thorough search for deposit tickets on all accounts.

Q. These deposit tickets were kept in the ordinary and regular business of your bank, were they not, sir? A. Yes, sir.

Q. And are those deposit tickets records that your bank relies upon to do business every day? A. Yes, sir.

4954 *Earl E. Seiwell—For Amici Curiae—Redirect*

Q. And they are received by the tellers and checked, you say, is that right, sir? A. Yes, sir.

Q. Will you tell me in that Georgetown Holding account how much cash was deposited throughout the period of those deposit tickets, sir? When I say cash, I mean currency, sir. A. You mean just as shown on these deposit slips I find here?

Q. That shows by the records of your bank. A. $88.50.

Q. And those are all the deposit tickets for 1936 at your bank? A. 1936, on this one particular account.

4955 Q. From that one particular account, 88 and how much? A. $88.50.

Q. And all other deposits are in checks, or otherwise, sir? A. Yes, sir.

Q. Now, that is Georgetown Holding. Now, will you take the Namtaw Realty, please? Are the deposit tickets which you hold in your hand also deposit tickets that you, yourself, took out yesterday on the basis you have described? A. Yes, sir.

Q. Are they all the deposit tickets maintained by the bank on the particular account that you are holding, sir? A. They are for the period of 1936.

4956 Q. Now, would you examine those deposit tickets carefully and tell the jury how much cash was deposited in that particular account?

Mr. Gray: Just a moment. If Your Honor pleases, the only objection I am making is, first, because, it has nothing to do with the situation, and, secondly, because I haven't asked him a thing about this case. He handed me the papers and I handed them back.

The Court: He may answer the question if the question be interpreted as meaning that you want him to look at the deposit slips and say what there appears.

Mr. Gahagan: Yes, sir.

The Court: And compute the amounts there appearing.

Mr. Gahagan: Yes, sir.

The Court: That may be done. An exception for each defendant may be noted, and you may go ahead.

The Witness: About $778.15.

By Mr. Gahagan:

Q. For the year 1936, sir? A. Yes, sir.

Q. On the Namtaw Realty account? A. On the Namtaw Realty Corporation.

Q. Will you give the dates and the amounts of each of 4958
those, sir? Well, I will withdraw that question, sir. Let's take the——

The Court: I don't want my uncomfortable expression which you observed to keep you from proving your case, but——

Mr. Gahagan: No, I just wanted to be sure they are below $1,000.

The Court: The cloud on my countenance is sunshine.

Mr. Gahagan: Yes, sir.

The Court: I don't do these things, ladies and gentlemen of the jury, to be uncomfortable, but prog- 4959
ress is what we want, so far as it may be consistent with justice.

Mr. Gahagan: Some of these Mr. Gray has gone over, so may I examine them to see which ones they are?

The Court: Yes.

By Mr. Gahagan:

Q. Those are the two he did not go over. Now, a third account at your bank is 50 West Third Street Corporation, is that right? A. Yes, sir.

Q. And we are talking about the period of 1936, sir? A. Yes, sir.

Q. Did you make a search of your records and get all of the deposit tickets maintained by your bank on that account, Mr. Seiwell? A. Yes, sir.

Q. I show you a group of papers and ask you whether those are all the deposit tickets maintained on that account for the year 1936, sir. A. Without carefully checking the sheet, I would say that they are all the slips on that particular account.

4960

Q. And you pulled them out, yourself, last night, sir? A. Yes, sir.

4961

Q. Would you look at each deposit ticket and state the amount of cash deposited in that particular account with the date thereof as you are glancing through them, sir? A. Singularly, you mean?

Q. Singularly, yes, rather than making a computation, I think it will go faster. May I interrupt you just one moment, sir? On these deposit tickets, are there not certain legends indicating where items are to be put, sir? I refer to the deposit legend which is bank notes, large; is that right, sir? Does that appear on every deposit ticket? A. Yes, sir.

Q. Printed on the slip? A. That is printed on the deposit slip.

4962

Q. What items are on this deposit slip?

Mr. Gray: We agree you may read them, Mr. Gahagan.

Mr. Gahagan: I would rather do it my own way, Your Honor.

Mr. Gray: All right. I will withdraw my agreement.

The Witness: Bank notes, ones and twos.

By Mr. Gahagan:

Q. And the next one. A. Specie.

Q. Specie means, as Mr. Gray described, coin? A. Coins of all denominations.

Q. And the next item is checks? A. Checks, yes, sir.

Q. Now, taking those slips, would you go through those deposit slips and read not only the amount, but under which item on the deposit slip the particular amount appears? In other words, whether it is specie, bank notes ones and twos, or bank notes large?

The Court: But it is cash you are referring to?

Mr. Gahagan: It is cash I am referring to in every instance, and not checks.

4964

The Witness: 50 West Third Street Corporation, is that the one you are referring to?

By Mr. Gahagan:

Q. Yes, sir. A. $3 bank notes, ones and twos, on June 11, 1936.

Mr. Gallagher: Pardon me, I can't hear you.

The Court: $3 bank notes.

The Witness: June 11, 1936.

By Mr. Gray:

Q. $3? A. Yes, sir. 4965

By Mr. Gahagan:

Q. Keep your voice up, sir. A. Specie, $45, June 12, 1936; $16.50 specie, July 20, 1936; August 17, 1936, $10 specie. That is all.

Q. Now, would you take these slips and tell me what they are, sir? A. Deposit slips of Transient Garage Corporation.

Q. At your bank, sir? A. At our bank.

4966 *Earl E. Sciwell—For Amici Curiae—Redirect*

Q. And they are, also—to speed it up, they are also deposit tickets which you pulled out last night, sir? A. Yes, sir, for the same period.

Q. For the same period, covering 1936? A. Yes, sir.

Q. Would you go through those slips in the same way indicating the amounts of cash deposited? Or, I would rather do it this way, if I may withdraw that question. I think I can speed it up this way: go through those deposit slips and tell me the first time when you come to any item of $1,000 or more.

4967 The Court: Of cash?

Mr. Gahagan: Of cash.

The Witness: June 22, 1936.

By Mr. Gahagan:

Q. June 22, 1936, and what does that say, sir? A. Do you want a description?

Q. Yes, sir, what does the deposit ticket say? A. Bank notes ones and twos, $1,100; specie, $100.

Q. All right, sir. Now, would you continue and give me any other item in cash of $1,000 or larger? A. July 6, 1936.

Q. Yes, sir, on July 6, 1936, what item appears on that deposit ticket, sir? A. Bank notes, ones and twos, $1,000.

4968 Q. Ones and twos; that means one and two dollar bills? A. Yes, sir, that is our term for the ones and twos. On August 3, 1936, bank notes ones and twos, $1,600; specie, $83.52.

Q. There is another item on there, isn't there, bank notes large, above the ones and twos? A. Yes, sir.

Q. Have you come to any item yet that has anything opposite bank notes large? A. I don't think so.

Q. Will you look back over them?

Mr. Gahagan: May the record indicate that the witness is examining the records? A. No, sir.

By Mr. Gahagan:

Q. Now, "no, sir" up to what date, sir? A. Well, they seem——

Q. I mean, in other words,—— A. Up to August 17, 1936.

Q. Up to August 17, 1936, is that right, sir? A. Yes.

Q. There is no item listed in that account under "Bank Notes Large" of a thousand dollars or more? A. There are no items listed on these deposit slips of bank notes large or a thousand dollars or more.

Q. Thank you, sir. Now, would you continue? A. Transient Garage Corporation, September 3, 1936, bank 4970
notes large, one thousand dollars; bank notes ones and twos, eleven hundred dollars; specie, $158.16.

Q. And those particular slips are checked by the tellers as they come in at the window? A. Yes, sir.

Q. And all three items were covered on that last slip, all three items, I mean, there was bank notes large, one thousand, bank notes ones and twos, and specie? A. Yes, sir.

Q. Yes, sir. A. September 17, 1936, bank notes large, two thousand dollars; bank notes ones and twos, three hundred dollars; specie, $2.85; and checks.

By Mr. Gallagher:

Q. Pardon me, what was the date? I am sorry. A. 4971
September 17th.

September 28th, 1936, bank notes large, one thousand dollars; bank notes ones and twos, nine hundred dollars; specie, $55.20.

September 28, 1936, bank notes large, one thousand dollars; bank notes ones and twos, twelve hundred dollars; specie, $125.09, and another item of——

By Mr. Gahagan:

Q. What does "Bank notes large" mean?

The Court: It means just what he said it meant before, five dollars and above, I assume.

4972 *By the Court:*

Q. Doesn't it? A. That is right.

The Court: He testified to it.

Mr. Gahagan: I am sorry.

A. (Continued) October 3, 1936, bank notes large, one thousand dollars; bank notes ones and twos, nine hundred dollars; specie, $232.41; and checks.

October 6, 1936, bank notes, large, one thousand dollars;
4973 bank notes ones and twos, one thousand dollars; specie, $105.01; and checks.

November 14, 1936, bank notes large, one thousand dollars; bank notes ones and twos, nine hundred dollars; specie, $295.27; and a check.

I have three slips here dated December 1936. There seems to be no date on them. The first one——

By Mr. Gahagan:

Q. No date; you mean no year? A. The year, but not date of the month.

Q. I see. A. No day of the month.

4974 Bank notes large, two thousand dollars; bank notes ones and twos, two hundred dollars; specie, $36.15.

Second one, bank notes large, one thousand dollars; bank notes ones and twos, one thousand dollars; specie, $94.18; and checks.

The third one, bank notes large, fifteen hundred dollars; bank notes ones and twos, three hundred dollars; specie, $11.31.

Q. Would you examine the deposit tickets for the Consolidated Biological Products, Inc.?

Mr. Gahagan: I withdraw the question, if I may, Your Honor.

By Mr. Gahagan:

Q. I show you certain papers and ask you what they are. A. Deposit slips and a ledger sheet of the Biological Products, Incorporated—Inc.

Q. Now, the deposit slips, were those—those were gotten out by you, sir? A. Yes, sir.

Q. And do those to the best of your ability in your searching represent all the deposit slips in those accounts—on that account? A. For the period 1936, yes, sir.

Q. And that is true, the same with respect to all the other accounts, is that right? A. Yes, sir. 4976

Q. All that you could find? A. Yes, sir.

Q. And would you tell me what amounts of cash were deposited during the period 1936 in that account, indicating, of course, whether they are bank notes large, bank notes ones and twos, or specie? A. There was no cash.

Q. No cash at all? A. No cash at all.

Q. Under any one of those three headings? A. No, sir.

Q. Now, I show you more deposit slips and ask you what account they cover, sir? A. Comedy Amusement Company deposit slips and ledger sheets.

Q. And would you go through those deposit slips, sir, and state to the Court and jury what amounts of cash are reflected upon those deposit slips as having been deposited 4977
in the Comedy Amusement account, Comedy Amusement Corporation account, in the year 1936, at your bank. A. No cash.

Q. No cash at all. A. No cash deposited, no, sir.

Q. Under any one of the three headings? A. No, sir.

Mr. Gahagan: May I confer?

By Mr. Gahagan:

Q. Mr. Seiwell, dropping that line——

The Court: May I ask you, merely in order that I may carry the thing along properly in my mind, as

4978 to whether you have now asked the witness as to the cash deposited in all of the accounts whose records he has brought in?

Mr. Gahagan: May I put those questions, please?

The Court: I am just asking your information.

Mr. Gahagan: You reminded me of something, sir, and I would like to put the questions to clear it up.

By Mr. Gahagan:

Q. Have you made an examination, Mr. Seiwell, of the
4979 records at the bank at which you work, the Marine-Atlantic Branch of the Guarantee Trust Company, or the Guarantee Bank and Trust Company, as it is now called, to determine what accounts were maintained in the year 1936 at the Guarantee Trust Company on which Eva Fox or Belle Fox could draw checks? A. Yes, I have.

Q. And have you produced today all such accounts—no, the signature cards of all such accounts that you were able to find at your bank, sir? A. I have, sir.

Q. In addition to that, sir, have you produced today all the deposit tickets on all of those accounts that you were able to find for the year 1936, sir? A. I have.

The Court: Now, that is fine, now, will you answer
4980 my question?

Mr. Gahagan: Yes, I am going to with the next question,——

The Court: All right.

Mr. Gahagan: —but I wanted to lay that foundation.

By Mr. Gahagan:

Q. Now, have you examined all of the deposit tickets that you have brought today? A. I don't think so. I didn't look over the All Continent.

4981

Q. You have one other, the All Continent? A. There are two, the Parkwood Corporation and the All Continent, yes.

Q. Oh, fine. Would you go over the Parkwood and the All Continent for me, sir, and perform the same procedure that I have asked you to do with respect to these other accounts? Take one at a time, of course. A. Before I start, do you want these out for any particular thing?

(The witness indicated deposit tickets.)

By Mr. Gahagan:

4982

Q. I show you one deposit ticket on All Continent Corporation, December 28, 1935, and ask you whether it reflects any cash deposit at all, sir. A. No, sir.

Q. And I show you another deposit ticket, July 23, 1936, and ask you whether that reflects the deposit of any cash at all, sir? A. No, sir.

Q. I see.

Mr. Gahagan: I didn't know the answer to Your Honor's question. I probably should have said that, sir.

The Court: I think I did know the answer to that, but I thought I would ask you?

Mr. Gahagan: May the record indicate that the witness is now examining——

4983

By Mr. Gahagan:

Q. What are you examining, Mr. Seiwell? A. The deposit slips of the All Continent Corporation for the year 1936.

Q. Thank you, sir. A. No cash reflected on these deposit slips.

Q. On the All Continent deposit slips? A. On the All Continent Corporation, no cash.

Q. Thank you, sir. Would you now look through the Parkwood account and pick out—are the Parkwood deposit slips there, sir? A. Yes.

4984 *Earl E. Sciacci—For Amici Curiae—Redirect*

Q. —and pick out any deposit slips which reflects the deposit of cash in the year 1936? A. July 14, 1936.

Q. Yes, sir. A. Parkwood Corporation.

Q. Yes, sir. A. Nine hundred dollars, ones and twos; thirty-one hundred dollars, specie.

Q. Yes, sir.

Mr. Gray: Is this Parkwood, may I ask?

Mr. Gahagan: Yes, sir.

The Witness: The Parkwood Corporation.

The Court: May I interrupt for one moment, if you please? Would it not, as in another instance, 4985 serve your purpose if, instead of asking for all deposits of cash, you confine your question to all deposits of cash in excess of one thousand dollars comprised of large bills? Would that serve your purpose or wouldn't it?

Mr. Gahagan: It would, with this modification——

The Court: If there is a modification go right along as you are going.

By Mr. Gahagan:

Q. Would you, sir, examine the deposit tickets and state— 4986 and read what deposits of cash are reflected thereon of one thousand denominations and those in excess of one thousand? A. I don't——

Q. One thousand in amount? A. You mean in the large?

Q. In cash. A. In the large money or on the whole?

Q. In both. A. All right.

Q. Both, sir? A. July 14, 1936, specie, thirty-one hundred dollars.

Q. And "specie" means coin? A. Yes, sir.

Q. Yes, sir. A. June 27, 1936, bank notes, ones and twos, one thousand dollars.

June 19, 1936, bank notes, ones and twos, one thousand dollars.

March 23, 1936, bank notes large, twenty-five hundred dollars.

Q. What date is that, sir? A. March 23, 1936.

Q. Was that before or after you received the first shipment of thousand dollar bills from the Federal Reserve Bank of Philadelphia, sir?

Mr. Gray: No, wait a minute, that is objected to. That is only done for the purpose——

The Court: It may be answered.

Mr. Gray: Would Your Honor hear me further a minute about that, please, sir? The dates speak for themselves. 4988

The Court: You do it so nicely,——

Mr. Gray: Well,——

The Court: ——and I am going to hear you——

Mr. Gray: Yes, sir.

The Court: ——but I will hear you at what you call down here the side bar.

Mr. Gray: All right, sir.

(Discussion at side bar.)

The Court: I will leave you to your best judgment. I will exclude the question in this form at this time. I do not mean that the fact inquired for is not material, but it may not be called to the jury's attention 4989 in that way at this time. You can talk about it in your argument all you want.

Mr. Gahagan: In the summation, Your Honor, may I——

The Court: Oh, of course.

Mr. Gahagan: May I refer to that?

The Court: Oh, of course.

Mr. Gahagan: All right, thank you.

The Court: That is why I am excluding it now, is because it is an argument, which you make at the proper time.

Mr. Gahagan: All right, sir, thank you.

The Court: I think you must have misunderstood my ruling.

Mr. Gahagan: All right, sir, thank you.

The Court: Do you see what I mean, now?

Mr. Gahagan: Yes, I do now, sir.

The Court: Oh, yes.

By Mr. Gahagan:

Q. Mr. Seiwell, what date were we up to, now, sir, the last slip? A. March 23, 1936. I read that.

Q. All right, sir. Well, don't read that again. Would you kindly now go to the next slip, sir? By the way, those slips are not in order, are they? A. No, sir. That was the last one, sir. There are no more.

The Court: I must say to you, Mr. Gahagan, that you were very, very polite to me if you left the bench with the idea that I was not going to let you argue that matter. Of course, I was going to let you do that. You must have thought me very stupid.

Mr. Gahagan: No, sir.

The Court: All right.

Mr. Gahagan: I abide by Your Honor's instructions every time.

Your Honor, I have a line here which will take much more than five minutes, and it is an entirely different line that I have gone into now, and I will start on the line if you want me to, but I would prefer going into it fresh and not breaking up this line of questions, sir. It is not haphazard questions, I have a line of questions that I have prepared——

The Court: You understand that I have said we are going to finish this witness before Mr. Fox goes on?

Mr. Gahagan: That is perfectly all right, sir. I think that would be best.

The Court: All right. Well, now he is coming at two o'clock, but don't know why we should not have until quarter past two if we want it. I think there are about fifteen of us that want it.

Mr. Gahagan: Your Honor, may I ask whether it would be all right for someone to inform the witness that he will not be needed until after two-thirty, the particular witness,—

The Court: Oh, certainly.

Mr. Gahagan: —Mr. Fox, rather than have him 4994
sit around here, in view of his condition, sir.

The Court: Oh, certainly, that may be done.

Mr. Gahagan: I didn't want to communicate with him without advising the Court.

The Court: You are not going to interfere with that, are you?

Mr. Gray: If Your Honor is about to take a recess I only wish you to say to this witness that he should not discuss this matter with anybody during the recess.

Mr. Gahagan: I won't——

The Court: I am just not going to say it—— 4995

Mr. Gray: All right.

The Court: —to the witness.

Mr. Gray: And before Your Honor takes a recess, also, will you give me another moment at side bar, sir?

The Court: Yes, sir.

Mr. Gray: Thank you.

The Court: Is there any objection to my letting the jury go?

Mr. Gray: Oh, yes, yes, this need not be placed on the record, what I am going to say, sir.

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The Court: Will you take your departure and have a good luncheon and come back at quarter past two, if you can?

(Recess, 12:55 until 2:15 P. M.)

AFTER RECESS

Present: Counsel as before noted.

4997 *Government's Evidence (Continued):*

EARL E. SEIWELL, recalled.

Redirect Examination (Continued):

Mr. Gahagan: I wish to recall Mr. Seiwell.

Mr. Salsburg: Will Your Honor indulge me until we get our brief cases out of the closet?

The Court: Yes. Mr. Gahagan, will you wait until they get their papers?

Mr. Gahagan: May I ask the witness one question while we are waiting, because he may have the
4998 record left outside in the suitcase.

The Court: Yes.

By Mr. Gahagan:

Q. Have you brought Recordak rolls of the check cashed on May 8, 1936, with you, sir, that you have in the court room? A. I believe they are in that one envelope, Mr. Gahagan—the bottom one.

Mr. Gray: While he is looking at that, Mr. Gahagan, may I take another matter up with his Honor at side bar? It has nothing to do with this witness.

(Conference at side bar.)

The Court: Well, gentlemen, have you your papers yet?

Mr. Gray: No, sir; the clerk locked them up, and is usually back here to open it for us, but I think we might proceed if someone will lend us a sheet of paper for a minute.

The Court: Now we will go ahead.

By Mr. Gahagan:

Q. Leaving the deposit slips and going back to May 8, 1936, Mr. Sciwell, I show you Government's Exhibit 42; (Amici Exhibit 188) and those are your block sheets, are they not, sir? 5000

Mr. Gray: May the——

Mr. Gahagan: May 8th.

The Witness: Yes, sir, they are.

By Mr. Gahagan:

Q. Do you have in court——

The Court: Now, you know you mean May 8th and not May 7th, don't you? 5001

Mr. Gahagan: May 8, 1936.

The Witness: Yes, they are.

By Mr. Gahagan:

Q. Can you tell from that block sheet, Government's Exhibit 42 (Amici Exhibit 188), what checks were cashed by you on May 8, 1936?

Mr. Gray: If Your Honor pleases, I think this may be a matter entirely within Your Honor's discretion. This was covered entirely in direct examination, and

5002 *Earl E. Seiwell—For Amici Curiae—Redirect*

I have not even touched it in cross-examination, and therefore it does not seem to me to be proper to go back over it again in redirect.

The Court: Well, you have some purpose for such repetition as there is, have you?

Mr. Gahagan: I felt, sir, that this was in answer to the cross-examination, sir, and I have a definite purpose in mind.

The Court: All right, you may proceed.

Mr. Gray: I won't ask any exception, because I think it is in your Honor's discretion.

5003 The Court: Oh, do take one.

Mr. Gray: All right, though I don't need it.

Mr. Gahagan: Will the reporter read the question?

(Question read as follows:

"Q. Can you tell from that block sheet, Government's Exhibit 42 (Amici Exhibit 188), what checks were cashed by you on May 8, 1936?")

Mr. Gahagan (continuing): And when I say "cashed" I mean currency given out of your window.

The Court: I assume, no matter what the form of your question may be, to which there has been objection interposed, that you are asking him as to the con-

5004 tents of that paper.

Mr. Gahagan: Yes, sir.

The Court: Now, I would like to know whether the paper itself has yet been marked as an exhibit.

Mr. Gahagan: Government's Exhibit 42. (Amici Exhibit 188.)

The Court: All right. That I say for the purpose of the record, of course.

By Mr. Gahagan:

Q. Can you tell? Is the only question I have before you, sir. A. Yes.